(16,391.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 241.

MARIANNE J. BALDY, BY HER NEXT FRIEND, W. B. PRITCHARD, PLAINTIFF IN ERROR,

vs.

JOHN H. HUNTER, AS EXECUTOR OF EDWARD H. W. HUNTER, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print
Bill of exceptions in Chatham superior court	1	1
Exceptions to order overruling motion for new trial	1	1
Specification of material parts of record	2	1
Judge's certificate to bill of exceptions	3	2
Certificate of clerk of superior court to bill of exceptions	4	3
Certificate of clerk of supreme court to bill of exceptions	5	3
Transcript from Chatham superior court	6	3
Brief of evidence	6	3
Testimony of Alice Baldy	6	3
Mary Jane Baldy	7	4
Mrs. E. J. Baldy	7	5
Rev. T. J. Head	8	5
Admissions in defendant's answer	9	5
Statement of evidence for defendant	9	6
Copy of returns of guardian from 1857 to 1874	10	6
Statement as to investment in Confederate bonds	19	13
Statement as to power of attorney, &c	19	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 28, 1897.

	Original.	Print.
Testimony of Dr. T. O. Powell	21	14
Dr. J. R. Cleveland	22	15
Letters of dismissal by the ordinary	23	15
Testimony of John H. Hunter	23	16
Statement from Barber's table	23	16
Petition	24	16
Summons	27	19
Sheriff's return	29	19
Amendments to petition	29	20
Plea	33	23
Answer	35	24
Decision and charge of the court	39	27
Verdict	41	29
Judgment	41	29
Motion for new trial	42	30
Rule *nisi*	44	31
Order overruling motion for new trial	44	31
Certificate of clerk of superior court	45	31
Certificate of clerk of supreme court	46	32
Opinion	47	32
Judgment	48	33
Clerk's certificate	49	33
Writ of error	50	33
Citation	52	34
Petition for writ of error	53	35
Order allowing writ of error	55	36
Bond	56	36
Assignment of errors	59	38
Clerk's certificate	63	40

1 GEORGIA,
Chatham County.

Be it remembered that on February 12th, 1895, during the December term of Chatham superior court, there came on to be tried the case of Marianne J. Baldy, by her next friend, W. B. Pritchard, against John H. Hunter, as executor of E. H. W. Hunter, deceased, before his honor Robert Falligant, the judge of said court, and a jury empanelled for that purpose, and on said day, under the instruction of the court, the jury found a verdict for the defendant. Thereupon, during the same term of said court and within thirty days after the verdict, the plaintiff made her motion for a new trial and filed the same in office, together with a brief of the evidence, which was duly agreed upon by counsel and approved by the court.

The said motion for a new trial was regularly continued until the next term, to wit, the March term, of said superior court, when the same came on to be heard on the 14th day of March, 1895, and on said 14th day of March his honor the judge passed an order and judgment overruling said motion for a new trial.

To this judgment and order of the court overruling the said motion for a new trial the plaintiff in error then and there excepted and now excepts and assigns error thereon upon each of the grounds stated in said motion for a new trial, and specifically assigns error in overruling the motion for a new trial upon the first ground thereof that the verdict is contrary to law, and upon the second ground thereof that it is contrary to the evidence, and upon the third and fourth grounds thereof that the court erred in instructing a verdict for the defendant and in charging the jury that the
2 investment in Confederate bonds was lawful, and upon the fifth and sixth ground- in refusing to instruct the jury as therein requested.

The plaintiff in error hereby specifies the following as so much of the brief of evidence and such other parts of the record as are material to a clear understanding of the errors complained of, to wit:

First. The testimony of Alice Baldy from the brief of evidence.

The testimony of Mary Jane Baldy from the brief of evidence.

The testimony of Mrs. E. J. Baldy from the brief of evidence.

The testimony of Rev. T. J. Head from the brief of evidence.

The admissions in the defendant's answer as set out in the brief of evidence.

The receipt of E. H. W. Hunter, as guardian, to the administrators of plaintiff's father, as set out in the brief of evidence.

Certified copy of the returns of E. H. W. Hunter, as guardian for Marianne J. Baldy, from 1857 to 1874 inclusive, as set out in the brief of evidence.

Petition to the superior court of Jefferson county, Ga., and the order authorizing an investment in Confederate bonds, as set out in the brief of evidence.

Power of attorney, dated February 22nd, 1875, from Edwin H.

Baldy and Marianne J. Baldy to W. H. Baldy, authorizing him to receive from Dr. Hunter, their guardian, all money or other property that may be due to them from him, and the receipt signed by William H. Baldy on the back of same for Edwin H. Baldy, and the statement of the entry of record, the objection to the introduction in evidence and the agreement of counsel, as set forth in the brief of evidence on page 21.

The certificate and acknowledgment of receipt, signed by William H. Baldy, and endorsement on the back, as set forth in the brief of evidence on pages 22 and 23.

The testimony of Dr. T. O. Powell from the brief of evidence.

3 The testimony of Dr. J. R. Cleveland from the brief of evidence.

Letters of dismissal by the ordinary, as set forth in the brief of evidence.

The testimony of John H. Hunter from the brief of evidence.

The statement from Barber's table, as set forth in the brief of evidence.

The agreement of counsel approved by the court and all the entries by the clerk on said brief of evidence.

Second. The petition of the plaintiff and the amendments thereto.

Third. The plea and the answer of the defendant.

Fourth. The decision and charge of the court.

Fifth. The verdict of the jury and the judgment thereon.

Sixth. The motion for a new trial and the rule *nisi* and the entries upon the same.

Seventh. The order of the judge overruling the motion for a new trial.

And now within thirty days from the date of the judgment complained of comes the plaintiff in error and tenders this her bill of exceptions and prays that the same may be certified according to the statute in such cases made and provided, that the errors alleged to have been committed may be considered and corrected.

BARROW & OSBORNE,
Attorneys for Plaintiff in Error.

I do certify that the foregoing bill of exceptions is true, and specifies all of the evidence and specifies all of the record material to a clear understanding of the errors complained of, and the clerk of the superior court of said county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the next term of the supreme

4 court that the errors alleged to have been committed may be considered and corrected.

R. FALLIGANT,
Judge E. J. C. of Geo.

Savannah, Geo., March 23, 1895.

GEORGIA,
Chatham County.

CLERK'S OFFICE, SUPERIOR COURT.

I, James K. P. Carr, clerk of said superior court, do hereby certify the above and foregoing instrument in typewriting and writing to be the true original bill of exceptions filed in this office in the case of Marianne J. Baldy, by next friend, &c., *versus* John H. Hunter, as executor of Edward H. W. Hunter; a copy of which bill of exceptions remains on file in this office. I further certify that the March term, 1895, of Chatham superior court, at which the motion for new trial in said case was determined, is still in session, as appears by the minutes thereof.

In testimony whereof I have hereunto set my official signature and affixed the seal of said court this 28th day of March, A. D. 1895.

JAMES K. P. CARR.

5 Due and legal service acknowledged.

GARRARD, MELDRIM & NEWMAN,
Def't's Att'ys.

March 23, 1895.

Filed in office March 23, 1895.

JAMES K. P. CARR,
Clerk S. C., C. C.

Filed in office March 29, 1895.

LOGAN BLECKLEY,
D. C. S. C., Ga.

Clerk's office, supreme court of Georgia.

ATLANTA, *March* 26, 1896.

I hereby certify that the foregoing pages hereto attached contain a true copy of the bill of exceptions in the case therein stated, as appears from the original now of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Seal Supreme Court of the State of Georgia, 1845.

Z. D. HARRISON, *Clerk.*

6 MARIANNE J. BALDY, by Her Next Friend, W. B. PRITCHARD,
v.
J. H. HUNTER, Executor of E. H. W. Hunter, Deceased.

Brief of Evidence.

Plaintiff's evidence.

ALICE BALDY testified by interrogatories that she is the plaintiff's sister. Plaintiff was born February 21st, 1854. She is in the State lunatic asylum. Her mind is deranged. First observed her mental derangement when she landed at Savannah on her return from

school in Baltimore early in June, 1872. During the remainder of that year and through the year- 1873, 1874, and 1875 her mind was too weak, unreasoning, and unsteady to accomplish anything. In the spring of 1875 her condition was pitiable in the extreme. She did not have sufficient reason to know what she required or how to supply her simplest wants. Much of the time she — oblivious of hunger and thirst, taking no notice of what was set before her until long fasting would force her to take food or drink.

During the spring of 1875 her condition mentally was more deplorable than ever before. It was impossible for her to comprehend legal documents or to transact business of any kind at any time during the spring of 1875, for she could never plan or execute the simplest affairs of ordinary domestic life. That she was deranged in her mind in February and March, 1875, is true beyond all question. For whole days she would not appear to see or hear anything that took place, nor would she voluntarily speak a word to any one. She said she had been robbed and would be robbed again, and kept a light burning, sitting up in bed all night often, watching the door the robber would enter; sat for hours at a time on the front porch,
watching the man from Louisville, Jefferson county, who she
7 said passed and repassed the house; said she knew them,
though disguised, and they had come to injure her; also that there was a conspiracy to murder her, and her brothers were in it. She refused food until it was tasted by others, lest it had been poisoned. She would burst into uncontrollable fits of insane laughter, but there was nothing to laugh at. In her best condition she could not carry on a connected conversation; she bathed the walls and furniture to ease her aching head; an impression once made, however erroneous, was fixed and nothing could alter it; she was deprived entirely of capacity to transact business. She could not conduct those affairs of ordinary life that a young child with ordinary intellect could understand and perform correctly.

MARY JANE BALDY testified by interrogatories that she is plaintiff's oldest sister; that plaintiff is deranged, and is incapable of taking care of herself or of anything belonging to her, and has to be kept at the lunatic asylum. Often when her friends visit her they are not allowed on account of her condition to see her. She is unable to understand business of any kind; often failed to recognize her family or friends, calling them by strange names; always regarded one or more of them as enemies, and not always the same one; said she had been robbed; showed her empty purse; said we helped people in Louisville to rob her, and that her brothers had murdered her; spoke of herself as dead; said her head had been taken off, and the one given her was not hers, it was too small, she could not make it fit; said her fingers were gnawed by wild beasts and her hands cut off at the wrist. She could not understand the nature and import of any business transaction whatever. This had noticeably been the case ever since August, 1872. From that time to the present her mind has been too much deranged to reason upon any

subject or come to a decision upon anything or comprehend the meaning of the thing proposed.

Mrs. E. J. BALDY testified by interrogatories: I know Marianne J. Baldy; she is my daughter. Her mind is deranged. She is in the asylum, and I have not seen her for years. The first
8 peculiar and unusual manner and conduct I observed in my daughter was in the fall after her return from school in Baltimore; do not remember the year. She had been a very bright child, fond of reading and studying, and naturally of a cheerful disposition, but in addition to the peculiarities I alluded to I noticed that she seemed to seclude herself much in her own room, and have long spells of crying, long fits of sadness; seldom cheerful, but nearly always melancholy; seemed to be grieving about something, but did not talk much; appeared to have lost all energy; one after another, laid aside all her usual occupations; if she made mistakes, if any one attempted to remedy them or observe them, it hurt her feelings; for a while she began to talk a great deal about herself, and at times to herself; wrote a story of her life and made a tune to it, and would tell it in a song, playing on the piano, but it was very wild and discordant; gave up visiting every one, even her most intimate friends; appeared to love me, though at times she would forget I was her mother, and sometimes she would strike me with her hands; sometimes she would sit upon the head-board of her bed, in her night dress, and call herself by name and ask, Where are you? over and over; getting no answer, would say, Poor child, she is dead. She never had sufficient mind from the time she came from Baltimore to transact any business for herself.

Rev. T. J. HEAD testified by interrogatories: Is a minister of the gospel; age, 52; known plaintiff; has known her for twenty-nine years (29); she is now in the lunatic asylum; last time I saw her she was mentally deranged. She has been deranged, to my knowledge, twenty-two years (22). I first observed her mental derangement in September, 1872. She was boarding at my house at that time. I have known her from a child, and did not know of anything wrong with her mind until 1872, while she was at my house.
It manifested itself in her conversation, countenance, and her
9 actions; was very noisy; would interrupt me when reading aloud so I would be compelled to stop. At one time she was throwing out sugar; when I requested her to stop she came up to me and tried to force it into my mouth. She was indifferent to danger and would not allow herself to be controlled by any one.

The Admissions in the Defendant's Answer.

The admissions in the defendant's answer were read in evidence by the plaintiff to the effect that the plaintiff is the daughter of W. H. Baldy, who is deceased; that E. H. W. Hunter was her guardian, and as such guardian he took possession of her estate as a minor. He received at first one thousand nine hundred and

forty-seven dollars and eighty-eight cents ($1,947.38). The amount received in all was two thousand four hundred and eighty dollars and sixty-four cents ($2,480.64). On January 1st, 1859, he had in hand two thousand three hundred and forty-seven dollars and eighteen cents ($2,347.18).

Evidence for the Defendant.

Receipt of Edward H. W. Hunter, as guardian, to the administrators of plaintiff's father, dated May 11th, 1857, for her distributive share of the estate of her father, being nineteen hundred and forty-seven dollars and thirty-eight cents ($1,947.38). The property was turned over to the guardian in the shape of promissory notes on different individuals, and, in addition to the foregoing, two notes on James Bernard, dated January 1st, 1856, for one thousand dollars ($1,000.00), each due January 1st, 1857 and 1858, respectively, and one note for six hundred and eighty dollars ($680.00), credited with four dollars ($4.00), dated 2nd of February, 1856, due October 1st, 1857; also an order on Miller and Jackson, of Augusta, for the net proceeds of an execution in favor of the administrators against Osborne and Whitlock. These last items, commencing with the Barnard notes, belonged to all the heirs, and plaintiff is only interested to the extent of one-eighth.

10 Certified copy of the return of E. H. W. Hunter, as guardian for Marianne J. Baldy, from 1857 to 1874, inclusive, as follows:

Acts and Doings of Edward H. Hunter, Guardian of Marianne J. Baldy.

1857. Guardian, Dr.

May 11.

To amount received from estate of wards for them.....	$1,947 38
Dec. 31st, interest on $1,932, Jan'y 7th.....	133 00
	2,080 38

CONTRA.

By am't p'd ⅓ bill of E. Cain, No. 1.....	$14 46
By am't p'd bill of D. M. & J. F. Pender, No. 2.....	4 29
" " " bill of Jas. Fleming & Co., No. 3.....	9 12½
" " " bill of B. McGowan, No. 4.....	1 06¼
" " " Mrs. E. J. Baldy, No. 5.....	55 00
" " " ⅓ expenses to Waynesboro.....	50
" " " ¼ bill Miller & Polhill, as per voucher No. 1, return of Wm. H. Baldy for 1857....	48 68
" " " ⅓ bill of E. Garlick, as per voucher No. 1 of Elizabeth M. Baldy, 1857.....	2 70
" " " ⅓ bill of Diehl, as per voucher No. 1, return Edwin H. Baldy for 1857.....	4 41⅓
" " " ordinary.....	1 50

By am't p'd commission on interest, $133.00, @ 10% ..	$13 30
" " " " in receiving $1,947.38, @ 2½..	46 68
" " " " paying out $138.34, @ 2½....	3 45
Due ward Jan'y 1st, 1858.....	1,877 21
	2,080 38

Interest to be paid on $1,800.
Balance reserved to pay expenses, to be paid in cash.
Sworn to May 15th, 1859.

11 Return of Edward H. Hunter, guardian of Marianne J. Baldy, 1857. Filed in office May 15th, 1858. Fee, $1.50. Recorded.

Acts and Doings of Edward H. W. Hunter, Guardian Marianne J. Baldy, for 1858.

Guardian.

To am't on hand last return.....	$1,877 21
To interest on $1,800.00....	126 00
Mar. —, on Dr. Barnard's note.....	287 48
Interest on same, 10 months...	16 77
April 9, on *fi. fa.*, Osborn & Whitlock.....	139 64
Do., 8⅔ months.....	7 05
	2,454 15

CONTRA.

By am't paid Miss E. J. Baldy, 1.....	72 02
" " " E. H. W. Hunter, 2.....	3 00
" " " tax, 3.....	2 76
" " " ordinary.....	1 55
Com. on $149.82, int.....	14 97
" " receiving 427.02, 2½.....	10 68
" " paying out 79.33.....	1 98
Due ward January 1st, 1859.....	2,347 18
	2,454 15

Int. to be paid on $2,267.00; balance reserved to pay expenses in cash.
Sworn to June 1st, 1859.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1858.

Acts and Doing- of E. H. W. Hunter, Guardian of Marianne J. Baldy, for 1859.

12 Guardian to ward, Dr.

To am't on hand last return.....	$2,347 18
" " interest on $2,267.00.....	158 69
	2,505 87

CONTRA.

By am't paid Mrs. E. J. Baldy, No. 1		93 88¼
" " " tax, No. 2		2 79
" " " ordinary		1 55
" " " commissions on interest, $158.69		15 86¾
" " " paying out $98.22		2 45
" " " due ward Jan'y 1st, 1860		2,389 33
		2,505 87

Interest to be paid on $2,293.00; balance reserved to pay expenses in cash.

Sworn to June 25th, 1860.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1859. Filed in office June 25th, 1860. Fee, $1.50. Recorded.

Acts and Doings of Edward H. W. Hunter, Guardian for Marianne J. Baldy, for 1860.

Guardian, Dr.

To amount on hand last return		$2,389 33
" " interest, $2,293.00		160 51
" " received from J. D. Mungin		106 14
" " interest on same 8 months		4 94
		$2,660 92

13 CONTRA.

By *ma't* p'd Mrs. E. J. Baldy, No. 1		$82 68
" " " ⅓ No. 2, E. H. Baldy		5 46
" " " tax, No. 2		2 98
" " " ordinary		1 45
" " " commissions on interest, $165.45		16 64
" " " " " receiving $106.14		2 64
" " " " " paying out $92.58		2 31
Due ward Jan'y 1st, 1861		2,546 84
		2,660 90

Interest to be paid on $2,500.00; balance retained for expenses.

Sworn to May 6th, 1861.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1860. Filed in office May 6th, 1861. Fee, $1.45. Recorded.

Edward H. W. Hunter, guardian, in account with Marianne J. Baldy, his minor ward, for 1861.

Guardian, Dr.

To correct amount of principal on hand, there having been a mistake in the former returns in allowing compound interest instead of simple interest against it.

Guardian	$2,410 49
To amount of interest on hand from former returns	125 07
To interest on $2,410.49 per one year	168 76
Ag. amount of interest	293 83

Guardian, Cr.

By am't paid Mrs. E. J. Baldy, No. 1	$77 42
" " " tax, State and Co., 2	4 52
" " " soldiers' tax, 3	3 36
By am't paid W. A. Wilkins, 4	5 00
14 By am't p'd ordinary	1 65
" " " retained for commission on $168.76, interest raised	16 87
By am't p'd, retained commission on $91.95, am't p'd out.	2 29
" " " amount of interest on hand unexpended Jan'y 1st, 1862	182 72
	293 83

Sworn to June 19th, 1862.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1861. Filed in office June 19th, 1862.

Acts and Doings of E. H. W. Hunter, Guardian of Marianne J. Baldy, a Minor, for 1862.

Guardian, Dr.

To am't due minor last return, principal	$2,410 49
" " unexpended interest due last return	182 72
" int. on $2,410.49, year	168 73
	251 45
By am't paid Mrs. E. J. Baldy, No. 1	137 13
" " tax, S. & Co., 2	7 00
" " soldiers' 3	4 55
" " ordinary	1 50
" " com. on int. raised	16 87
" " paying out $150.24	3 75
Amount of unexpended int. due minors Jan'y 1st, 1863.	180 59
	351 45

Sworn to July 2nd, 1863.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1862.

E. H. W. Hunter; guardian, in account with Marianne J. Baldy, a minor, for 1863.

15 Guardian, Dr.

To am't principal on hand last return	2,410 49
Am't received from A. M. Stephen Baldy	326 34
" unexpended int. on hand Jan., 1863	180 59
" int. realized in 1863	67 93
" dividend in Confederate bonds	66 66⅔
	3,052 01⅓

Guardian.

By am't p'd Confed. tax, No. 1	10 00
" " " S. & Co., No. 2	9 85
" " " W. A. Wilkins, 3	15 00
" " " E. H. W. Hunter, 4	5 00
" " " E. J. Baldy, 5	169 25
" " " Thos. Borring as per deed for land of record	1,120 00
" " " for Confed. 8 per cent. bond bought at depository in Savannah Apr. 25th, 1863	1,200 00
" " " ordinary	2 00
" com. on receiving $326.34	8 15
Com. on int. raised	6 79
Com. paying out $2,531	63 27
Amount due ward Jan'y 1st, 1864	442 60½

Sworn to May 28th, 1864.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1863.

Acts and Doings of E. H. W. Hunter, Guardian of M. J. Baldy, a Minor, for 1864 *and* 1865.

16 Guardian, Dr.

To am't due minor Jan'y 1st, 1864	$442 62½
As per last return, int. realized	28 00
	470 62½

Guardian, Cr.

By am't p'd State & Co. tax, No. 1	25 33
" " " Confederate tax, 2	20 10
" " " Wilkins & Cain, Confed. tax, 3	200 50
" " " Wilkins & Cain, 4	5 00
" " " N. Diehl, 5	50
Cash sent Mrs. Baldy for minor's use	66 66⅔
" paid ordinary	75
By am't com. on int. raised	2 80
" " paid paying out	5 49
Am't due minor Jan'y 1st, 1866	242 49
	470 62½

Sworn to July 2nd, 1866.

STATE OF GEORGIA, }
Jefferson County. }

Edward H. W. Hunter, on being duly sworn, deposes and says that in 1863, in pursuance of an order, judgment, or decree of the superior court of said county as guardian of M. J. Baldy, a minor, he did *bona fide* invest twelve hundred dollars of the funds of said minor in the eight per cent. bonds of the Confederate States, and that the bonds so held by him are the same kind of currency which he received for said minor's estate.

E. H. W. HUNTER.

Sworn to and subscribed before me July 2nd, 1866.
17 NICHOLAS DIEHL, *Ord'y.*

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, minors, for 1864 and 1865. Filed in office Feb'y 2nd, 1866. Recorded.

Acts and Doings of Edward H. W. Hunter, Guardian of M. J. Baldy, Minor, 1867.

Guardian, Dr.

To amount due minor Jan'y 1st, 1866	$242 49
Int	20 20
	262 69

Guardian, Cr.

By am't paid E. J. Baldy, No. 1	91 16
" " " Wilkins & Cain, 2	3 33½
" " " ordinary	1 20
Com. on paying out	2 39
" on int	2 02
Am't due minor Jan'y 1st, 1868	162 58½
	262 69

Sworn to July 1st, 1868.

Return of E. H. W. Hunter, guardian of Marianne J. Baldy, for 1866. Filed in office July 1st, 1868. Recorded.

Acts and Doings of E. H. W. Hunter, Guardian of M. J. Baldy, a Minor, for 1868, 1869, *and* 1870.

Guardian, Dr.

To am't due minor last returns	162 58
" received from Chas. Kelly on sale land	20 00
" received — Tom Wilby on sale land	15 66
" King Patterson on sale land	15 00
" Moses Jackson on sale land	118 07
" J. H. Wilkins on sale land	116 67
" George T. Palmer on sale land	10 00
	458 98

18 Guardian, Cr.

By am't paid E. J. Baldy, No. 1	$290 00
" " " taxes for 1868, vouchers are	4 93
" " " " for 1869, in return of E. H. Baldy	4 16
" " " " for 1870, for this year	2 94
" " " " " Chronicle & Sentinel	4 34
" " " Geo. T. Palmer	3 33
" " " M. J. Baldy, 2	45 00
" " " W. A. Wilkins, 2	5 00
" " " George W. Stevens	75
" " " ordinary for this return	1 50
" " " commissions on receiving	7 41
" " " paying out	9 00
Amount due minor by this return	80 62
	458 98

Sworn to June 17th, 1871.

Tenth return of E. H. W. Hunter, guardian for M. J. Baldy, for 1868, 1869, and 1870. Filed in office June 17th, 1871. Recorded.

Acts and Doings of E. H. W. Hunter, Guardian of M. J. Baldy, for 1871, 1872, 1873, *and* 1874.

Guardian, Dr.

To am't on hand 1st Jan'y, 1871, as per last return	80 62
Interest on same, 1871, 1872, and 1873 and 1874	22 56

CREDITS.

By am't paid tax 1871, 1	5 83
" " " " 1872, 2	6 07
" " " " 1873, 3	4 06
" " " " 1874, 4	4 66
Interest on tax of 1871	1 20
" " " 1872	84
" " " 1873	21
Am't paid Cain & Polhill, 5	5 00
19 Am't paid N. Diehl, 6	6 33
Interest on same 1 year	44
Am't paid Cain & Polhill, 7	11 67
Am't paid Alice Baldy, 8	30 00
Interest on same from 20th July, 1871	7 25
Amount paid Alice Baldy, 9	100 00
Interest on same from 20th Sept., 1871	2 29
Amount paid Alice Baldy, 10	100 00
Interest on same	21 87

Paid ordinary this return	2 00
Commission on this return	9 20
Amount on hand	339 57
Due guardian 1st Jan'y, 1875	103 18
	$236 39

Sworn to March 6th, 1875.

Final return of E. H. W. Hunter, guardian for M. J. Baldy, for 1871, 1872, 1873, and 1874. Filed March 6th, 1874. Recorded.

A petition to the superior court of Jefferson county, Georgia, by Wm. A. Wilkins, as attorney for the guardian, stating that he had on hand one thousand dollars ($1,000.00) which he thought should be invested in the bonds of the Confederate States, and praying for an order to make said investment; also the order thereupon granted by the judge, dated April 25th, 1863, granting the order giving leave to the guardian to invest in Confederate bonds the said sum of one thousand dollars.

Power of Attorney.

Power of attorney, dated February 22nd, 1875, from Edwin H. Baldy and Marianne J. Baldy to William H. Baldy, authorizing him to receive from Dr. Hunter, their guardian, all money or other property that may be due to them from him; to give receipts therefor, and clothing him with full power to do any and all things necessary to effect a full or a partial settlement of all matters arising out of said guardianship in his discretion.

On the back of this paper was a receipt for one hundred and twenty-four dollars and nineteen cents ($124.19) for Edwin H. Baldy as the amount due him as per last returns of said Hunter rendered January 1st, 1875, signed by W. H. Baldy.

This paper had an entry of record in the clerk's office of the superior court. The *port* of attorney was objected to by plaintiff's counsel upon the ground that this execution was not proven. The objection was withdrawn and the paper allowed to go in evidence without proof of its execution, upon the statement of defendant's counsel that the plaintiff should not be bound by any settlement made under it.

Receipt Signed by William H. Baldy.

This is to certify and acknowledge that I, as attorney-in-fact for M. J. Baldy, did, on the 15th day of March, 1875, receive from E. H. W. Hunter, the guardian of the said Marianne J., all the land which said guardian held for her, it being the one-third interest share in two hundred and eighty acres (280) of land in Jefferson county, adjoining lands of J. H. Wilkins, J. W. Carswell, and others, lying on Great Goat creek, and that I paid to said E. H. W. Hunter as such guardian the sum of two hundred and thirty-six dollars and thirty-nine cents (236.39), which amount appeared to be due to

him on the first of January, 1875, by his return of his acts and doings as such guardian made to the ordinary of Jefferson county on the first day of March, 1875.

WM. H. BALDY.

On the back of this is the following endorsement:

GEORGIA, *Lee County.*

I don't know whether this is the paper I signed or not accurately. I signed a paper some months after the transaction referred to at the request of Dr. Hunter, and the purpose of same was to acknowledge that as attorney-in-fact for Marianne J. Baldy I had received and sold the land referred to. I paid him back some money;
21 don't recollect the amount. The propriety of paying back the same and the correctness of his returns was expressly stipulated as a matter to be adjusted between him, said Hunter, and said Marianne J., and to abide her ratification afterwards. My authority was to receive and sell lands and account for the money, and I could not have sold the land with Hunter's consent without agreeing to pay said money. I am informed that this paper is desired to be used as evidence of a final settlement with said guardian, and it was not so designed. I think it is the paper I signed, but don't recollect the amount of money paid. Signature looks like mine.

Testimony of Dr. T. O. Powell.

Dr. T. O. POWELL testified by interrogatories:

I know Miss Marianne J. Baldy. I reside at the lunatic asylum, Baldwin county, Ga. I am superintendent and resident physician. She is an inmate. The record show- that she was received into the asylum the first time July 1st, 1878, and remained until May 30th, 1879. Her mental condition when she went home the first time was very much improved; we regarded her as about well. As to her mental capacity at that time to attend to business would depend upon circumstances as to whether it was of an exciting tendency likely to produce a recurrence of her malady. She was received again into the institution April 6th, 1883. The records of the institution show that she went home again February 6th, 1884, and was received back August 6th, 1884. The first time she went home she was regarded as about well; the second time she was improved, but not by any means well; the first time she was discharged as restored May 30th, 1879, and we regarded her as about well. She was recommitted and received again April 6th, 1883. Insanity is the result or action of a diseased brain which may be partial or general in extent; continuous, intermittent, or periodical in its manifestations. At first her malady was periodical, which came on at irregular intervals, the disease being progressive, lucid intervals grew shorter, paroxism of mania longer and now are continuous without decided lucid intervals. Yes,
22 we have records of our patients, and the record- show that at first she was a subject of chronic mania, entertaining

many delusions, hallucinations, and illusions, but had lucid intervals, during which time she did not entertain insane illusions, hallucinations, or illusions, but was easily excited. Disease being progressive, the lucid intervals grew shorter, paroxysm of mania longer and more continuous. When Marianne Baldy was first received into the asylum Dr. Green was superintendant. Save the first time Marianne Baldy went home I stated to her mother if she took her home she would have to do so on her own responsibility. She was suffering from nostalgia or homesickness. From the time she was first received in the asylum up to now, as to her mental capacity — investigate and understand a long and complicated account and settlem-*tn*, that would depend upon circumstances as to whether it was of an exciting tendency that might produce a renewal of her malady. I don't remember her speaking of this suit or its being mentioned in her presence. Save the first time when she went home she was on what is called a furlough and was under my watch care. The family did ask to return her. On account of the crowded condition of the institution we could not receive her at the time. We could then only receive as vacancies occurred. Never knew her until she was received here as a patient.

Testimony of Dr. J. R. Cleveland.

Dr. J. R. CLEVELAND testified by interrogatories: Known the plaintiff, but not defendant; have resided in Griffin about thirty years; been living for twenty years within one hundred and fifty yards of the Baldy family; have known Marianne J. Baldy from childhood; knew her prior to 1875 and until now. Prior to 1875 and up to about 1875 I think she was a girl of good sense and sane. After that time her mind was affected, and she has been insane up to the time she left here for the asylum, and she is still and has been in the asylum and insane. I don't think she has been in a proper condition of mind to transact business since about 1875, because
23 she has been insane; was frequently at her house during the time she was at home, and she was frequently at my house; saw her two or three times every week. Her mind was affected prior to 1875. She returned home several times; don't know whether she was discharged or not. I don't think that from the time she first went to the asylum she was in a condition to attend to the ordinary affairs of life. At times she was worse than at others, but at her best or most lucid periods I don't think she was capable of attending to the ordinary business affairs of life. I was not her medical attendant; have stated how often I saw her.

Letters of Dismissal by the Ordinary.

Letters of dismissal by the ordinary of Jefferson county, Ga., of Edward H. W. Hunter as guardian of E. H. M. J. and E. H. Baldy, December 4th, 1876.

Testimony of John H. Hunter.

JOHN H. HUNTER testified: Dr. E. H. W. Hunter was my father; I am his executor; he died in 1885; he lived in Louisville, Jefferson county, Ga. I have had possession of his papers as executor. During the war I was too young to know anything about his business. He was living in Louisville when Sherman's army passed through. He had a safe in his office in a store in Louisville. I suppose that he kept papers in that safe. I don't know of my own knowledge what he had in it. While Sherman's troops were in Louisville the safe was broken open. I don't know what was in it at the time. I have always understood that my father kept his valuable papers in the safe, but I have no knowledge of its contents at the time it was broken open. I have never found any Confederate bonds among his papers.

Statement from Barber's Table.

Barber's table showing the value of Confederate money in gold March 15th, 1863—five for one.

We agree that the foregoing is a correct brief of the evidence in the case of Baldy *v.* Hunter.

BARROW & OSBORNE, *Att'ys for Baldy.*
GARRARD, MELDRIM & NEWMAN,
Def't's Att'ys.

24 Brief of evidence approved.

R. FALLIGANT, *Judge.*

March 17, 1895.

Filed in office Feb. 21, 1895.

JAMES K. P. CARR,
Cl'k S. C., C. C.

The Petition of the Plaintiff and the Amendments Thereto.

GEORGIA, }
Chatham County. }

To the superior court of said county:

The petition of Marianne J. Baldy, who sues by her next friend, W. B. Pritchard, showeth unto your honor that Marianne J. Baldy became of age on the 21st day of February, 1875, and that — afflictions which had previously affected her reason more or less for an indefinite period her mind became absolutely, wholly, and permanently deranged by April, 1875, and in August, 1875, she became wholly unable to attend to the most ordinary affairs of daily life, and most of the time unwilling to accept aid or suggestion from others in any matter, and her mental condition remaining thus deplorably unsettled, with variation only in degree of intensity, she became soon thereafter and for many years and is at this time an

inmate of the lunatic asylum. Petitioner further showeth that she is the daughter of Wm. H. Baldy, deceased, who left a large estate, and that in the year 1857, which — petitioner was a minor, Dr. E. H. W. Hunter, of Jefferson county, was appointed her guardian, and received and took possession of her estate, which consisted of about twenty-four hundred dollars ($2,400) or twenty-five hundred dollars ($2,500) in money, and that this was anterior to the war, when money was worth dollar for dollar in gold.

Petitioner is informed and believes that her said guardian converted the same to his own use, and, notwithstanding this
25 fact, some time during the late war her said guardian claims that he invested eleven hundred dollars of her said money in Confederate bonds, and in return made by her said guardian to the ordinary of said county, made in 1866, he pretends to have made said investment; and now comes petitioner and surcharges and falsifies said return and begs to be allowed to show proof that it was not petitioner's money that was invested in said bonds.

And petitioners further showeth that the remainder of her other money, to wit, eleven hundred and twenty dollars, her said guardian claims to have invested in land while petitioner was a minor.

Petitioner showeth that said investment was illegal and contrary to law, and to that extent was a conversion by her said guardian to that portion of her said estate, and petitioner showeth that on the trial of said case she is entitled to have a judgment for said amount, with interest from the date of said conversion.

Petitioner further showeth that said guardian claims to have paid for said lands in Confederate money, whereas she had no Confederate money in his hands, and that her said guardian had no right nor authority to pay for said lands in Confederate currency and charge the same to her account as if Confederate money was worth dollar for dollar in gold.

And your petitioner asks that if it be held that her said guardian had legal authority to invest her said money or any part thereof in said lands, a decree be rendered against him for the difference in value of gold and Confederate currency at that time, with interest on the same from the date of the said investment which he claims to have made.

Petitioners further showeth that it is claimed by her said guardian that the lands heretofore referred to were contracted to be sold to various persons in 1868 under bonds for titles and placed said parties in possession, and the parties to whom such sales were
26 made improved the same by clearing the land and building upon the same, but, being unable to pay for said land, her said guardian took the lands back in 1870 and held and possessed and controlled the same until 1875, and that said lands were held by said guardian for your petitioner, and that the same are and were worth for rent seventy-five dollars per annum.

In this connection petitioner showeth that her said guardian claims to have invested for herself, her brother, and sister, for each of them, eleven hundred dollars in land, and claimed to have purchased four hundred and twenty acres (420) *acres*, being one hundred

and forty acres for each, and one-third interest in said lands petitioner claims to be worth seventy-five dollars per annum for rent as aforesaid.

And your petitioner asks that if it be held that said guardian had authority to invest said funds in said lands as aforesaid, then that a decree be rendered against him for the rents as aforesaid.

Your petitioner further showeth that her said guardian claims that in the year 1876 he obtained letters of dismission.

Petitioner showeth that the letters then granted were void because your petitioner was then *non compos mentis* and had no other guardian but said Hunter and was incapable of knowing her legal rights or maintaining them.

In this connection your petitioner further showeth that there is no record in the ordinary office in Jefferson county that her said guardian ever made application to the ordinary of said county for letters of dismission, or that such letters were ever granted to him in terms of the law, and for this reason also the letters which her said guardian claims to have obtained were void.

Your petitioner further showeth that there was never a full and final settlement of her affairs with her said guardian, either before or since she became *non compos mentis*.

Your petitioner further showeth that in the year 1885 or about that time Dr. E. H. W. Hunter departed this life, and J. H. Hunter, formerly of Jefferson and now of Chatham county, qualified as executor on the estate of E. H. W. Hunter, deceased, who is made a party defendant to this suit, and for the facts hereinbefore
27 stated petitioner alleges that a cause of action has accrued to her and she is entitled to a judgment for the amount of money that was claimed to have been invested in Confederate bonds, as hereinbefore stated, with interest, and that she is entitled to have a judgment for the amount of money her said guardian claims to have invested in land, as heretofore set out, with interest.

And should it be held and decreed that said investment in land was legal, then she is entitled to rent on said land for the time of four years at seventy-five dollars per annum, as heretofore stated, with interest on the same, and she is also entitled to the difference in value of the Confederate money which her said guardian paid for the land at the time when it was paid and of gold, as hereinbefore stated, with interest on the same.

Wherefore petitioner brings suit and prays that process be issued, directed to the said J. H. Hunter, of said county, requiring him to be and appear at the next session of said superior court in and for said county, then and there to answer your petitioner's complaint.

STEWART & DANIEL,
W. L. PHILLIPS,
For Petitioners.

STATE OF GEORGIA, }
Chatham County. }

M. J. BALDY, by Her Next Friend, W. R. PRITCHARD, }
vs. }
J. H. HUNTER, Ex'or E. H. W. Hunter. }

To the sheriff of the county of Chatham or his deputy, Greeting:

The defendant, J. H. Hunter, executor of E. H. W. Hunter, is hereby required, personally or by his attorney, to be and
28 appear at the next superior court of Chatham county on the first Monday, that being the 4th day, of December next, then and there to answer the plaintiff on the merits of the foregoing petition, as in default of such appearance the said court will proceed as to justice shall appertain.

Witness the Honorable Robert Falligant, judge of said superior court, this 10th day of November, in the year of our Lord one thousand eight hundred and ninety-three.

STEWART & DANIEL,
W. R. PHILLIPS,
Plaintiff's Attorney-.

JAMES K. P. CARR,
Cl'k S. C., C. C.

STATE OF GEORGIA, }
Chatham County. }

Afterwards, to wit, on the — day of ——, one thousand eight hundred and ninety —, before the — of said court came the within-named plaintiff, by —— ——, attorney — within-named —— ——, and the jurors of the jury, whereof mention is within made, being called, elected, and tried, sworn, likewise come, who, to speak the truth of the within contained, upon their oaths say —.

Therefore it is considered that the said plaintiff do recover against the said defendant damages aforesaid by the —— —— aforesaid in form aforesaid assessed, and also — for — costs and charges aforesaid to the said plaintiff by the said court now here with its assent *increase* adjudged; and the said defendant in mercy, etc.

——. ——,
Plaintiff's Attorney.

29 STATE OF GEORGIA, }
Chatham County. }

SHERIFF'S OFFICE, *November 18th*, 1893.

I have this day served a copy of the within original writ personally upon the defendant, J. H. Hunter, ex'or of E. H. W. Hunter. The return of—

JOHN T. RONAN,
Sheriff C. Co. Ga.

Filed in office Nov. 10, 1893.

JAMES K. P. CARR,
Cl'k S. C., C. C.

Amendment to the Petition.

GEORGIA,
Chatham County.

In Chatham Superior Court. In Equity.

MARIANNE J. BALDY, Who Sues by Her Next Friend, W. B. PRITCHARD,
v.
JOHN H. HUNTER, as Executor of Edward H. W. Hunter.

And now comes the plaintiff in the above-stated case, and, by leave of the court first had and obtained, amends her petition as follows, to wit:

Your petitioner further states:

1. That the said defendant's testator, Edward H. W. Hunter, as guardian of your petitioner, claimed that on April 20th, 1863, he invested twelve hundred dollars ($1,200) of your petitioner's money then in his hands, as guardian, in bonds of the Confederate States of America. The said guardian claimed a credit of twelve hundred dollars ($1,200) on account of this investment. He further claimed that said bonds became worthless on his hand-. No such bonds were ever delivered to your petitioner or to any one for her, nor did said guardian ever offer any such bonds. Your petitioner, as before stated, became twenty-one years of age February 21st, 1875. The said guardian treated such bonds as worthless, and yet he claimed, and the defendant still claims, that he is entitled to a credit for the twelve hundred dollars ($1,200) thus invested.

2. On July 2nd, 1866, the said defendant's testator, as guardian, made the following affidavit:

30 STATE OF GEORGIA,
Jefferson County.

Edward H. W. Hunter, on being duly sworn, deposes and says that in 1863, in pursuance of an order, judgment, or decree of the superior court of said county, as guardian of M. J. Baldy, a minor, he did *bona fide* invest twelve hundred dollars ($1,200) of the funds of said minor in the eight per cent. (8%) bond- of the Confederate States, and that the bond- so held by him were the same kind of currency which he received for said minor's estate.

E. H. W. HUNTER.

Sworn to and subscribed before me July 2nd, 1866.
NICHOLAS DIEHL, *Ordinary.*

Your petitioner avers that the money belonging to her which was received by her guardian was gold, and was received by him in the years 1857 and 1858, and that it nowhere appears and has not been shown how said gold was transmitted into Confederate money.

3. Your petitioner avers that the investment of her money by her

said guardian in said Confederate bonds was contrary to the Constitution and laws of the United States, and that she is entitled to recover from the said defendant the said sum of twelve hundred dollars ($1,200), together with interest thereon from March 15th, 1875, in lawful currency of the United States, and that she has a right under the Constitution and laws of the United States to recover the aforementioned sums of money from the defendant, and that said right will be defeated by a construction of said Constitution and laws which will make valid and lawful the said investment of the said guardian.

4. Your petitioner further avers that the said guardian had no right to receive Confederate treasury notes or other Confederate currency in payment of any indebtedness due to him as guardian of your petitioner, and that the act of the legislature of Georgia, assented to April 18th, 1863, which purported to empower him to receive such Confederate currency in payment of claims due to the estate of his ward was unconstitutional, null, and void. Your petitioner's right to a recovery will be defeated by a construction of the
31 Constitution of the United States which permits the State thus to make something else besides gold and silver coin a tender in payments of debts due to your petitioner as a ward of her said guardian.

5. Your petitioner further avers that said guardian claimed and the said defendant still claims that the said guardian was lawfully authorized to invest your petitioner's money in Confederate bonds by an order of the judge of the superior court of Jefferson county, in this State. The said judge of the said superior court had no power or authority to authorize her said guardian thus to invest your petitioner's money in Confederate bonds. The act of the legislature of Georgia assented to December 16th, 1861, which purports to authorize him as guardian to invest your petitioner's funds held by him as such guardian in the bonds issued by the Confederate States of America is null and void, because the same is in conflict with the Constitution and laws of the United States. Your petitioner's right to a recovery will be defeated if a construction is put upon the Constitution and laws of the United States which will permit your petitioner to be deprived of her property by giving to the judges of the superior court the power to authorize her guardian to invest it in bonds issued by the Confederate States of America.

—. Your petitioner has never consented or agreed that any such investment should be made, nor has she ever accepted any such bonds nor ratified any such investment. She was an infant until February 21st, 1875, and since her majority has been mentally incapable of binding herself by contract with her guardian or by assent to his unlawful act, and since her majority, to wit, on March 15, 1875, he did refuse to pay said $1,200 to your petitioner, and then and there, on said March 15, 1875, did commit a breach of his duty and became indebted.

7. On May 18th, 1857, the distributive share of each one of the heirs of your petitioner's father's estate was one thousand nine hundred and forty-seven dollars and thirty-eight cents ($1,947.38), not

including three notes on Dr. James Barnard of two thousand six hundred dollars ($2,600) and a judgment against Osborn & Whitlock for one thousand dollars ($1,000). These notes and this
32 judgment were afterwards collected, making the share of each heir, your petitioner included, two thousand three hundred and ninety-seven dollars ($2,397).

On December 24th, 1858, the said Edward H. W. Hunter, as guardian, had in his hands two thousand one hundred dollars ($2,100) of your petitioner's money.

8. Your petitioner waives all discovery from the said defendant.

9. Wherefore, —asmuch as your petitioner is wholly remediless at or by the strict rules of the common law, she brings to your honor this her equitable petition and prays:

a. That a decree in her favor against the said defendant may be rendered for the principal sum of ($1,200) above mentioned and interest on the twelve hundred dollars ($1,200) thereof which was invested in Confederate bonds from March 15, 1875—that is to say, from the date when he first refused to pay over the same to your petitioner—all of which sum, both principal and interest, to be paid in lawful money of the United States.

b. That your petitioner may have such other and further relief in the premises as may be in accordance with the principles of equity and as the nature of her case may require; and your petitioner, as in duty bound, will ever pray, etc.

BARROW & OSBORNE,
Plaintiff's Attorneys.

Copy rec'd & service acknowledged without prejudice to any of the rights of d'f't.
July 14, 1894.

GARRARD, MELDRIM & NEWMAN,
D'f't's Att'ys.

Filed in office July 14, 1894.

JAMES K. P. CARR,
Cl'k S. C., C. C.

Amendment allowed and ordered filed.
July 14, 1894.

R. FALLIGANT, *Judge.*

BALDY
v.
HUNTER.

Plaintiff, by leave of the court, amends his petition as follows:

And your petitioner further alleges that the said defendant's testator, her said guardian, has never fully settled with her
33 or with any one for her; that she became twenty-one years of age on February 21, 1875, when for the first time he could be called upon to make a settlement and pay over to your petitioner what he had in his hands as her guardian, and that on the 15th of March, 1875, the said guardian claims that he made a full and final settlement with one W. H. Baldy, who, he says, was authorized

to act for your petitioner; but your petitioner avers that the said guardian did not fully settle with said W. H. Baldy, but, on the contrary, failed and refused to pay over to him twelve hundred dollars, which he owed then and there to your petitioner, and gave as his excuse that his return showed that he did not owe it, because he had invested it under order of court in Confederate bonds and had made his affidavit to that effect in the court of ordinary on July 2, 1866, and your petitioner avers that thi said guardian was afterwards, in 1876, discharged as said guardian, still not having paid to or accounted with your petitioner for said sum of money and interest thereon, and avers that on said March 15, 1875, and at the time of his discharge, in 1876, the said guardian committed a breach of his duty and was guilty of default and became indebted to your petitioner in the sum of twelve hundred dollars, with interest thereon from February 21, 1875.

And your petitioners avers that she was mentally incapable then and has since been incapable of protecting her rights or attending to any business.

BARROW & OSBORNE.

Amendment allowed.
In open court, February 8, '95.

R. FALLIGANT, *Judge.*

Amendment to petition. Filed in office Feb'y 8, 1895. James K. P. Carr, cl'k S. C., C. C. *C.*

The Plea and the Answer of the Defendant.

In Chatham Superior Court.

MARIANNE J. BALDY, Who Sues by Her Next Friend, W. B. PRITCHARD, *vs.* JOHN H. HUNTER, as Executor of Edward H. W. Hunter.	In Equity.

And now comes the defendant in the above-stated case and
34 for plea says that the said action should be abated because a lunatic can sue only by a guardian and not by next friend; and for further plea defendant says that plaintiff should not maintain her said action against him:

1. Because after the said Marianne J. Baldy became twenty-one years of age she executed and delivered to her brother, W. H. Baldy, Esq., who was an attorney-at-law of experience and ability, a written power of attorney, wherein she gave him full power and authority to make settlement with her said guardian, Edward H. W. Hunter, of all matters concerning his guardianship of her; that said W. H. Baldy came to Jefferson county on or about the 15th of March, 1875, and after a full exhibit of said guardian's accounts and as investigation of his returns on record in the office of the ordinary of said county, and with full knowledge of all of the legal rights of

said M. J. Baldy, did make a final settlement of said guardian's accounts on the 15th day of March, 1875, whereby he received from said guardian all the property he had belonging to said M. J. Baldy, to wit, and undivided one-third ($\frac{1}{3}$) interest in two hundred and eighty (280) acres of land, and paid to said guardian the sum of two hundred and thirty-six and $\frac{39}{100}$ ($236.39) dollars, which sum was due to said guardian by said M. J. Baldy by his last return.

2. For that on the 15th day of March, 1875, said Edward H. W. Hunter, guardian for said M. J. Baldy, made a final settlement of his guardian's accounts *which* W. H. Baldy, the brother and attorney-in-fact of said M. J. Baldy, who was at that time more than twenty-one years old, and that more than four years had elapsed since said settlement before the filing of plaintiff's action, and that therefore her right of action is barred by the statute of limitations.

3. Because of the 4th day of December, 1875, at the December term of the court of ordinary for said county, letters of dismission from said guardianship were granted to said Edward H. W. Hunter, guardian of said M. J. Baldy, in terms of the law, by reason of which plaintiff's cause of action, if any she had, became forever barred.

And for further plea in this behalf defendant says that the transaction- complained of in regard to the investment of Confederate bonds and land are barred by the statute of limitations of 1869.

GARRARD, MELDRIM & NEWMAN,
Att'ys for Defendant.

35 Filed in office Nov. 3, 1894.

JAMES K. P. CARR,
Cl'k S. C., C. C.

Answer of Defendant.

In Chatham Superior Court.

MARIANNE J. BALDY, Who Sues by Her Next Friend, W. B. PRITCHARD,
v.
JOHN H. HUNTER, as Executor of Edward H. W. Hunter. } In Equity.

And now comes the defendant, John H. Hunter, as executor, and by his attorneys, Garrard, Meldrim & Newman, files this his answer to the original and amended petition in the above-stated cause, and for answer says:

1. This defendant has no personal knowledge of the condition of petitioner, as to her sanity or insanity, or if insane when said insanity commenced. Wherefore he prays strict proof thereof.

2. Defendant admits that said petitioner is the daughter of the late Wm. H. Baldy, deceased; that said Baldy left a certain estate, and that the late Dr. Edward H. W. Hunter became the guardian of said petitioner. He admits that said guardian took possession of the estate of said minor, and that said estate was worth nineteen hundred and forty-seven $\frac{38}{100}$ ($1,947.38) dollars at that time.

3. This defendant denies that said guardian converted the same or any part thereof to his own use, but says that the return made by him to the ordinary of the county of Jefferson was a just and true return.

4. This defendant says that the remainder of the estate of said ward, to wit, eleven hundred and twenty ($1,120) dollars, the said guardian did invest in land, the transaction of said guardian being substantially that the money had been loaned to good and solvent persons, who paid, as they had a right to pay, their notes to said guardian in Confederate money, and which Confederate money was in 1863 so received by said guardian at a time when it was the only currency in the country and was received by prudent men in the ordinary transactions of business life; that said guardian, being anxious to do his best for the protection of his ward, con-
36 sulted counsel, and under competent advice applied for and obtained an order from the judge of the superior court of Jefferson county allowing him to invest the money then in his hands belonging to his ward in Confederate bonds and in land; that the said guardian was at that time a man of some means.

He was a physician of large practice, which gave him a good income; much more than needed for his support. He was not engaged in any business enterprises which made it necessary for him to borrow money or use the funds of his ward; but, on the contrary, he had considerable sums of his own money loaned out, some of which was paid, as had been the case with money paid to him in payment of loans made by him of funds of his ward, in the common currency of the country. The bonds purchased by said guardian became worthless as the result of the war and the land was received by her, the balance of the account, namely, the sum of two hundred and thirty-six and $\frac{39}{100}$ ($236.39) dollars, being due by the minor to said guardian.

5. This defendant says that the investment of Confederate money in the bonds of the Confederacy and in lands under appropriate orders of the judge of the superior court of said Jefferson county, said court then having jurisdiction of the persons and subject-matter, was not illegal and contrary to law, but was in furtherance of the law and in consonance with the best interests of the ward.

6. Defendant shows that said guardian not only claimed to have paid for said lands in Confederate money, but that he did have such Confederate money in his hands arising from payment of notes, and that said Confederate money was invested, as already stated, under advice of counsel and under order of the court.

7. Defendant further says that his testator contracted to sell to various persons in 1868 certain lands belonging to his ward; that said parties were unable to pay for the land; that he was compelled to take it back in 1870; that they were productive of no revenue, and that all of his acts and doings were fairly and honestly conducted.

8. This defendant insists that said guardian did obtain letters of dismission; that they were not void, but, on the contrary, that said dismission was granted by the ordinary after full knowledge

37 and investigation on the part of the court that the trust of the guardian had been faithfully executed.

9. Defendant, further answering, says that said guardian did have a full and final settlement of the affairs of his ward.

10. This defendant admits that in the year 1885 the guardian departed this life, and that John H. Hunter qualified as executor on the estate of Edward H. W. Hunter, deceased, but he denies that the said petitioner is entitled to any judgment in her behalf for the amount of money invested by the guardian in land or a judgment against him in favor of said petitioner for any other reason.

11. This defendant denies that petitioner is entitled to rent on said land, but, on the contrary, insists that a full, final, and complete settlement was made by said guardian with petitioner.

12. Defendant, further answering, says that his testator did invest petitioner's money in bonds of the Confederate States; that he was entitled to credit of twelve hundred ($1,200) dollars on account of said investment; that said bonds did not become worth less on his hands, and insists that on an accounting between himself and petitioner he is entitled to credit for said sum of money.

13. This defendant admits that his testator did make the affidavit attached to and forming part of the amended petition to the effect that in pursuance of the judgment of the superior court he did invest said twelve hundred ($1,200) dollars in eight per cent. bonds of the Confederate States, and that the bonds so held by him were purchased with the currency then common throughout the Confederacy.

14. This defendant denies that the money belonging to said petitioner which was received by the guardian was gold, but, on the contrary, as hereinbefore stated, it was received in payment of notes, which notes had been made anterior to the war, but which were not paid by the makers thereof until during the war and were then paid in Confederate currency. The guardian had no right to refuse at that time and in the then prevailing condition of affairs to receive payment of the said notes in Confederate money. He exercised the same judgment and prudence which other men exercised, accepted payment in Confederate money, invoked the discretion of the

38 court as to the disposition to be made of the money, and followed the decree of the court by investing that Confederate money in Confederate eight per cent. bonds and in land. The Confederate bonds became worthless, and the petitioner got the land.

15. This defendant denies that the investment in Confederate bonds was contrary to the laws and Constitution of the United States, and suggests to the court that at the time when the money was received and the investment made the guardian, as a matter of fact, was not then being controlled by either the Constitution or laws of the United States.

16. This defendant insists that the said guardian did have the right to receive Confederate treasury notes or Confederate currency in payment of indebtedness due him as guardian; that the act of the legislature of Georgia which empowered him to receive such

currency was not unconstitutional, null, and void, and even if it were unconstitutional, null, and void, if the said guardian acted as a prudent man, doing the best possible with the light then before him, his conduct must be judged of in the then condition of affairs and not in the light of assumed unconstitutionality of a statute of Georgia, to which the said guardian was bound to yield obedience until it were declared to be unconstitutional and void. This defendant is not prepared at this time to go into a constitutional disquisition upon the subject of the right of a State in condition of war to make something else besides gold and silver coin a tender in payment of debts, and respectfully submits that such a disquisition does not affect the *bona fides* of the said guardian's conduct in investing, under a decree of court and under advice of counsel, money he had in his hands in Confederate bonds and in Georgia land.

17. This defendant admits that he does claim that said guardian was authorized to invest moneys belonging to petitioner in Confederate bonds by order of the judge of the superior court of Jefferson county.

18. This defendant still insists that said guardian was authorized to make investment of the Confederate money in his hands
39 in lands, and further insists that said investment was ratified by the petitioner.

19. This defendant admits that the distributive share of petition in her father's estate was on May 18th, 1857, nineteen hundred and forty-seven and $\frac{38}{100}$ ($1,947.38) dollars; that the trueamount actually received by the guardian was twenty-four hundred and eighty and $\frac{64}{100}$ dollars ($2,480.64) dollars, and not twenty-three hundred and ninety-seven*ty* (2,397) dollars as alleged in the petition, and that on January 1st, 1859, the guardian had in his hands twenty-three hundred and forty-seven and $\frac{18}{100}$ ($2,347.18) dollars, and that this sum ($2,347.18), as well as all other funds which may have come into his hands from time to time, were duly accounted for, and he regularly dismissed from the guardianship.

GARRARD, MELDRIM & NEWMAN,
Att'ys for Defendant.

Filed in office Nov. 3, 1894.

JAMES K. P. CARR,
Cl'k S. C., C. C.

Decision and Charge of the Court.

GENTLEMEN: The question submitted to me for consideration in this case is whether I am bound to follow the decision of the supreme court of Georgia upon the question of the lawfulness of the investment by the guardian of twelve hundred dollars ($1,200) in Confederate bonds; that is the point involved in this case, and there is no other issue between the plaintiff and the defendant. Upon that point I decide that I am bound to follow the decisions of the supreme court of this State until they are reversed by some superior tribunal.

In the case of Nelms *v.* Summers, 54 Ga., the court says, beginning on page 606:

"Summers, the ordinary of the county of Rockdale, suing for the use of certain wards, brought an action against Nelms and his sureties on a guardian's bond. It appears from the record that Nelms received certain Confederate money on the 7th of March,
40 1864; that he never had any property or other money of his ward in his hands; that on the same day that he received the Confederate notes he applied, under the acts of the General Assembly of 1861 and 1863, to the judge of the superior court for direction as to the manner in which he should invest, and that said judge directed him to invest in Confederate securities, and that he did so and produced them on the trial. The court held that he was not protected. We think he was protected. The acts of 1861 and 1863 fully authorized the application, the direction of the court, and the investment. See Acts of 1861, page 32, and Acts of 1863 and 1864, page 29. These acts are not in conflict with the constitution of Georgia, for they were affirmed by the convention which framed that instrument, and the decision and judgment of our courts are protected in the instrument itself, and declared to be valid and binding. Code, section 5147. Are they in conflict with the Constitution of the United States? We think not. They were passed, it is true, during the war between the Confederate and the United States, but their passage was in no sense a war measure, nor in aid of it. They were enacted to protect wards and minors in their estate at a time when everything was uncertain and all securities were doubtful. They were enacted to relieve trustee- from embarrassment and to throw around them judicial protection. The acts in question were to regulate the intercourse between our own citizens at a time when the Constitution and laws of the United States were without practical force in the State, and all had to yield to the *vis major* and then dominant power in the State. These acts were not made with the intention and for the purpose of aiding in the war against the United States, but to regulate our own domestic relations and duties among our own citizens in the domestic relations of guardian and ward as to the case at bar, and they come within the principle decided in Miller *v.* Gould, 38 Georgia, 465. We are aware of the decision pronounced by the Supreme Court of the United States in Horn *v.* Lockhart, in 17th Wallace, 570, but that judgment was pronounced upon an Ala. statute, was made on appeal from the circuit court of the United States, and is expressly confined to the courts of the United States.

We are not aware of any mode by which a case between
41 guardian and ward, all citizens of Georgia under the State statutes, can be supervised by the courts of the United States. If those courts get jurisdiction on the ground of one of the parties being a non-resident, then, indeed, those courts can adjudicate the question and the case in the last resort may go to the Supreme Court of the United States in cases where appeal may lie."

Charge of Court.

GENTLEMEN OF THE JURY: In the present case I am authorized to say that it is agreed between counsel that the investment was made *bona fide*, and the only question is whether it was lawful or unlawful for the guardian to make this investment, and, further, that as I may decide the legal question, I shall instruct a verdict for plaintiff or defendant, as upon that would depend his right to have credit for that amount in his settlement with his ward. Following the decision of the supreme court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore instructed to find a verdict for the defendant. Correct; let the decision and charge of court be filed as part of record.

R. FALLIGANT, *Judge.*

Filed in office Feb. 23, 1895.

JAMES K. P. CARR,
Cl'k S. C., C. C.

Verdict of the Jury.

We, the jury, find for the defendant.
February 12, 1895.

CHAS. M. GILBERT, *Foreman.*

Judgment Thereon.

In the Superior Court of Chatham County, March Term, 1895.

MARIANNE J. BALDY, by Next Friend, W. B. PRITCHARD,
—.
JOHN H. HUNTER, as Executor.

This cause came on to be heard and was argued by counsel, and the jury having rendered the following verdict:

"We, the jury, find for the defendant.

C. M. GILBERT, *Foreman.*

42 February 12th, 1895."

It is ordered, adjudged, and decreed that the said verdict be, and the same is hereby, made the judgment and decree of this court.

It is further ordered, adjudged, and decreed that the defendant recover in the sum of sixteen & $\frac{50}{100}$ dollars against the complainant for his costs in this behalf laid out and expended.

R. FALLIGANT, *Judge.*

GARRARD, MELDRIM & NEWMAN,
Sols. for the Defendant.

Decree signed and filed this 26th day of February, 1895.

JAMES K. P. CARR,
Clerk S. C., C. C.

Motion for a New Trial and the Rule Nisi.

In Chatham Superior Court.

MARIANNE J. BALDY, by Her Next Friend,
v.
JOHN HUNTER, as Executor of E. H. W. Hunter, Deceased. } In Equity.

The jury in the above-stated case, under the instructions of the court, having found a verdict for the defendant February 12th, 1895, during the December term of said Chatham superior court, now comes the plaintiff in said case, by her attorneys, during the same term of the court, and within thirty days after the verdict above stated makes this her motion for a new trial and files the same, together with a brief of the evidence, in office. She moves the court to set aside said verdict and grant her a new trial upon the following grounds, to wit:

First. The verdict is contrary to law.

Second. The verdict is contrary to the evidence.

Third. The court erred in instructing a verdict for the defendant.

Fourth. The court erred in charging the jury as follows: "Following the decision of the supreme court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore instructed to find a verdict for the defendant."

Fifth. Because the court erred in refusing to charge the jury, when requested to do so by plaintiff's counsel, as follows:

43 "An investment by a guardian of money of his ward during the Confederate war, and while both guardian and ward were residing within the Confederate territory, in bonds of the Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested."

Sixth. Because the court erred in refusing to charge the jury, when requested to do so by the plaintiff's counsel, as follows:

"The Constitution of the United States, article 6, par. 2, declares that the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The code of this State in its very first utterance says that the supreme law in this State is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question whether a State statute is in conflict with the Constitution of the United States. That court has decided that an act of a State legislature passed during the Confederate war authorizing a guardian to invest the money of his ward in Confederate bonds is in conflict with the Constitution of the United States and void.

The courts of this State are bound by that construction of the Constitution.

I charge you, therefore, that no act of the legislature of this State passed during the late war, authorizing a guardian to invest the funds of his ward in Confederate bonds, and no order of any court of this State granted in pursuance of said act of the legislature, would authorized such investment."

Wherefore the said Marianne J. Baldy, by her next friend, upon these grounds and upon each of them, prays the court that the verdict and judgment in this case may be set aside and a new trial granted her, and that a rule *nisi*, issue calling upon the defendant, the respondent in this motion, to show cause at such time as may be designated by this honorable court why said verdict and
44 judgment should not be set aside and a new trial granted; and, as in duty bound, your petitioner will ever pray, etc.

BARROW & OSBORNE,
Att'ys for Movant.

The extracts from the charge of the court and the requests of plaintiff's attorneys, which were refused, are correctly stated in the foregoing motion for a new trial, and the facts set forth in said motion are true.

It is ordered that the respondent or his counsel be served with a copy of the above motion and of this rule *nisi*, and that they show cause before me, on the 26 day of February, 1895, why a new trial should not be granted.

It is further ordered that if this motion shall not be then heard it shall stand continued until the next term of this court, and may then be heard at any time during said term.

R. FALLIGANT, *Judge.*

Feb'y 21, '95.

Service acknowledged Feb'y 21st, 1895.

GARRARD, MELDRIM & NEWMAN,
Defendant's Attorneys.

Filed in office Feb. 21, 1895.

JAMES K. P. CARR,
Cl'k S. C., C. C.

Order of the Judge Overruling the Motion.

Motion for a new trial overruled this 14th day of March, 1895.

R. FALLIGANT, *Judge.*

45 GEORGIA,
Chatham County.

CLERK'S OFFICE, SUPERIOR COURT.

I, James K. P. Carr, clerk of said superior court, do hereby certify the above and foregoing forty-three pages, in typewriting, printing, and writing, to contain a true and complete copy of such parts of the original record on file in this office as are specified in the bill of exceptions necessary to be transmitted to the supreme court in

the case of Marianne J. Baldy, by her next friend, W. B. Pritchard, *vs.* J. H. Hunter, executor of E. H. W. Hunter, deceased.

I further certify that the March term, 1895, of Chatham superior court, at which the motion for new trial in said case was determined, is still in session, as appears by the minutes thereof.

In testimony whereof I have hereunto set my official signature and affixed the seal of said superior court this 18th day of April, A. D. 1895.

JAMES K. P. CARR,
Clerk S. C., C. C., Georgia.

46 Filed in office June 24, 1895.

LOGAN BLECKLEY,
D. C. S. C., Ga.

Clerk's office, supreme court of Georgia.

ATLANTA, *March* 26, 1896.

I hereby certify that the foregoing pages hereto attached contain a true copy of the transcript of record in the case therein stated, as appears from said transcript now of file in this office.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

47 BALDY, Next Friend, }
v.
HUNTER, Executor. }

By the court, per LUMPKIN, justice:

1. The decisions of this court in the cases of McWhorter *v.* Tarpley *et al.*, 54 Ga., 291; Nelms *v.* Summers, *ibid.*, 605, and in other cases, the doctrine of which is recognized in the case of McCook *v.* Harp, 81 Ga., 237, are binding upon this court, and it is not constrained to follow the decisions of the Supreme Court of the United States in cases involving the same or similar questions.

2. According to the above-cited Georgia decisions, a guardian who, during the war between the States, in good faith invested the funds of his ward in bonds of the Confederate States under an order of the judge of the superior court, properly obtained under then existing laws, was protected thereby, and is not liable to the ward for the value of the money so invested.

Judgment affirmed.

Clerk's office, supreme court of Georgia.

ATLANTA, *March* 25, 1896.

I hereby certify that the foregoing is a true copy of the decision of the supreme court of Georgia in the case therein stated, as appears from the original now of file in this office.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court hereto affixed the day and year above written.

Z. D. HARRISON, *Clerk.*

48 Supreme Court of the State of Georgia.

ATLANTA, GA., *March* 16, 1896.

The honorable supreme court met pursuant to adjournment.
Present: All of the justices.
The following judgment was rendered:

MARIANNE J. BALDY, by Next Friend,
versus
J. H. HUNTER, Ex'r.

This case came before this court upon a writ of error from the superior court of Chatham county, and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.
Bill of costs, $10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *March* 26, 1896.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Pope Barrow, Esq., paid the above bill of costs.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

49 CLERK'S OFFICE, SUPREME COURT OF GEORGIA.

I hereby certify that the foregoing and attached pages contain a true copy of the entire record in the case of Marianne J. Baldy, by next friend, *v.* J. H. Hunter, executor, No. 2, eastern circuit, October term, 1895, as appears from the records and files of this court.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court, hereto affixed, at Atlanta, this March 26, 1896.

Z. D. HARRISON, *Clerk.*

50 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Georgia, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Marianne J. Baldy, by her next friend, W. B. Pritchard, against John H. Hunter, as executor of Edward H. W. Hunter, deceased, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exer-

cised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution
51 or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Marianne J. Baldy, suing by her next friend, W. B. Pritchard, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal U. S. Circuit Court, N. D. Georgia.]

O. C. FULLER,
Clerk of the Circuit Court of the United States
for the Northern District of Georgia.

Allowed by—
T. J. SIMMONS,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office July 6, 1896.

Z. D. HARRISON,
Cl'k S. C. Ga.

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States to John H. Hunter, as executor of Edward H. W. Hunter, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein Marianne J. Baldy, by her next friend, W. B. Pritchard, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas J. Simmons, chief justice of the

supreme court of the State of Georgia, this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

T. J. SIMMONS,
Chief Justice of the Supreme Court of the State of Georgia.

I hereby acknowledge due and legal services of the within citation.

GARRARD, MELDRIM & NEWMAN,
Counsel for J. H. Hunter, Ex'r of E. H. W. Hunter, Deceased, Def't in Error.

P. W. MELDRIM, *Of Counsel.*

June 29th, 1896.

Filed in office July 6, 1896.

Z. D. HARRISON,
Cl'k S. C. Ga.

53 In the Supreme Court of the State of Georgia.

MARIANNE J. BALDY, by Her Next Friend, W. B. PRITCHARD,
v.
JOHN H. HUNTER, as Executo- of Ed. H. W. Hunter. } In Equity.

Bill of Exceptions from the Superior Court of Chatham County.

Petition for writ of error from the Supreme Court of the United States to the supreme court of the State of Georgia.

And now comes Marianne J. Baldy, plaintiff herein, by her next friend, W. B. Pritchard, and says that on or about March 16th, 1896, this court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which more in detail appear from the assignment of errors, which is filed with this petition, and that in this suit there was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or therein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, *that* the decision was in favor of such their validity, or therein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the
54 said Constitution, treaty, statute, or commission, and that therein a manifest error hath happened, to the prejudice of this plaintiff.

Wherefore this plaintiff prays that a writ of error may issue in this behalf from the Supreme Court of the United States to the su-

preme court of the State of Georgia for the correction of errors so complained of, and that a transcript of record, proceeding-, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

BARROW & OSBORNE,
Sol's for Plaintiff in Error.

POPE BARROW, *Of Counsel.*

Filed in office July 6, 1896.

Z. D. HARRISON,
Cl'k S. C. Ga.

55 In the Supreme Court of the State of Georgia.

MARIANNE J. BALDY, by Her Next Friend, W. B. PRITCHARD,
v.
JOHN H. HUNTER, as Executor of Edward H. W. Hunter.
} In Equity.

This fifteenth day of June came the plaintiff, by her attorney, and filed herein and presented to this court her petition praying for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Georgia, intended to be urged by her, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof this court, being the court rendering the judgment or passing the decree complained of, does allow the writ of error upon the plaintiff giving bond according to law in the sum of two hundred & fifty dollars, which shall operate as a supersedeas bond.

In witness whereof this order allowing said writ of error is signed by Thomas J. Simmons, chief justice of the said supreme court of the State of Georgia, this 15 day of June, in the year of our Lord eighteen hundred and ninety-six.

THOMAS J. SIMMONS,
Chief Justice.

Filed in office July 6, 1896.

Z. D. HARRISON,
Cl'k S. C. Ga.

56 Know all men by these presents that we, W. B. Pritchard, next friend of Marianne J. Baldy, as principal, and —— ——, as sureties, are held and firmly bound unto John H. Hunter, as executor of Edward H. W. Hunter, deceased, in the full and just sum of two hundred and fifty dollars, to be paid to the said John H. Hunter, as executor of Edward H. W. Hunter, deceased, his certain attorney, executors, administrators, or assigns; to which payment,

well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 15th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a term of the supreme court of the State of Georgia, in a suit depending in said court between Marianne J. Baldy, by her next friend, W. B. Pritchard, plaintiff, and John H. Hunter, as executor of Edward H W. Hunter, deceased, defendant, a judgment was rendered against the said Marianne J. Baldy, by her next friend, W. B. Pritchard, and the said Marianne J. Baldy, by her next friend, W. B. Pritchard, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John H. Hunter, as executor of Edward H. W. Hunter, deceased, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Marianne J. Baldy, by her next friend, W. B. Pritchard, shall prosecute the writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

57 W. B. PRITCHARD, [SEAL.]
As Next Friend of Marianne J. Baldy,
By POPE BARROW, [SEAL.]
Att'y-at-law of Ward.
ALEX. S. MURRAY, *Surety.* [SEAL.]

Sealed and delivered in presence of—
VASSAR WOOLLEY,
N. P., Fulton Co., Ga.
JAMES A. DREWRY,
N. P., S. Co., Ga.

Approved by—
T. J. SIMMONS,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office July 6, 1896.

Z. D. HARRISON,
Clerk S. C. Ga.

58 GEORGIA, }
Spalding County. }

Before me personally came Alexander S. Murray, who on oath says that he is worth the sum of two hundred and fifty dollars ($250) over and above all his indebtedness and the amount of any exemption of property to which he may be entitled.

ALEX. S. MURRAY.

Sworn to and subscribed before me this 25th day of June, 1896.
JAMES A. DREWRY,
N. P., S. Co., Ga.

Filed in office July 6, 1896.

Z. D. HARRISON,
Clk S. C. Ga.

59 In the Supreme Court of the State of Georgia.

MARIANNE J. BALDY, by Her Next Friend, W. B. PRITCHARD,
v.
JOHN H. HUNTER, as Executor of Edward H. W. Hunter.
} In Equity.

Assignment of Errors.

The plaintiff in this suit, in connection with her petition for a writ of error, makes the following assignment of errors, which she avers occurred upon the trial of the cause, to wit:

First. In deciding, holding, and adjudging that the decisions of this court in the case of McWhorter *v.* Tarpley *et al.*, 54 Ga., 291; Nelms *v.* Summers, *ibid.*, 605, and in other cases, the doctrine of which is recognized in the case of McCook *v.* Harp, 81 Ga., 237, are binding upon this court, and it is not constrained to follow the decisions of the Supreme Court of the United States in cases involving the same or similar questions.

Second. In deciding, holding, and adjudging that, according to the above-cited Georgia decisions, a guardian who, during the war between the States, in good faith invested the funds of his ward in bonds of the Confederate States under an order of the judge of the superior court properly obtained under then existing laws was protected thereby and is not liable to the ward for the value of the money so invested.

Third. In affirming the judgment of the court below, to wit, the superior court of Chatham county, Georgia, in which a
60 judgment was entered for the defendant against this plaintiff.

Fourth. In affirming the judgment of the court below, to wit, the superior court of Chatham county, Georgia, in refusing to grant a new trial to this plaintiff, overruling the motion of this plaintiff for a new trial.

Fifth. In affirming the judgment of the court below, to wit, the superior court of Chatham county, Georgia, overruling the motion for a new trial of this plaintiff and thereby affirming the charge to the jury in these words:

"Following the decision of the supreme court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore instructed to find a verdict for the defendant."

Sixth. In affirming the judgment of the court below, to wit, the superior court of Chatham county, Georgia, in overruling the motion for a new trial of this plaintiff whereby was affirmed and approved the refusal of said judge of the superior court of Chatham county to charge the jury that—

"An investment by a guardian of money of his ward during the

Confederate war and while both guardian and ward were residing within the Confederate territory in bonds of the Confederate States was unlawful, and the guardian is responsible to the ward for the sum so invested;" this plaintiff having requested the judge of said superior court to instruct the jury in the foregoing language, and said request having been refused, and this plaintiff having excepted thereto and assigned error thereon in her motion for a new trial.

61 Seventh. In affirming the judgment of the court below, to wit, the superior court of Chatham county, Georgia, in overruling this plaintiff's motion for a new trial whereby was affirmed and approved the refusal of the judge of the superior court to charge the jury that—

"The Constitution of the United States, article 6, par. 2, declares that the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The code of this State in its very first utterance says that the supreme law in this State is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question whether a State statute is in conflict with the Constitution of the United States. That court has decided that an act of a State legislature, passed during the Confederate war, authorizing a guardian to invest the money of his ward in Confederate bonds is in conflict with the Constitution of the United States and void.

The courts of this State are bound by that construction of the Constitution.

I charge you, therefore, that no act of the legislature of this State, passed during the late war, authorizing a guardian to invest the funds of his ward in Confederate bonds, and no order of any court of this State granted in pursuance of said act of the legislature would authorize such investment."

This plaintiff having requested the judge of said superior court to instruct the jury in the foregoing language, and said request having been refused, and this plaintiff having excepted thereto

62 and assigned error thereon in her motion for a new trial.

Wherefore this plaintiff prays that the said judgment of the said supreme court of Georgia in favor of the said defendant and against this plaintiff may be reversed.

BARROW & OSBORNE,
Attorneys for Pl'ff in Error.

POPE BARROW, *Of Counsel.*

Filed in office July 6, 1896.

Z. D. HARRISON,
Cl'k S. C. Ga.

63 Clerk's office, supreme court of Georgia.

ATLANTA, GA., *July* 18, 1896.

I hereby certify that the foregoing pages hereto attached contain the original writ of error and citation in the case of Marianne J. Baldy, by next friend, *v.* J. H. Hunter, executor, together with a true and complete copy of the record and proceedings had in said case in the supreme court of the State of Georgia, as appears from the records and files of this office.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court hereto affixed the day and year above written.

Z. D. HARRISON,
Clerk of the Supreme Court of the State of Georgia.

Endorsed on cover: Case No. 16,391. Georgia supreme court. Term No., 241. Marianne J. Baldy, by her next friend, W. B. Pritchard, plaintiff in error, *vs.* John H. Hunter, as executor of Edward H. W. Hunter, deceased. Filed September 29, 1896.

ASSIGNMENT OF ERRORS
and
BRIEF FOR PLAINTIFF IN ERROR

[redacted]

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

MARIANNE J. BALDY, by her next friend W. B. PRITCHARD,
Plaintiff in error,
v.
JOHN H. HUNTER, as executor of EDWARD H. W. HUNTER, Deceased,
Defendant in error.

No. 241.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

ASSIGNMENT OF ERRORS.

Afterwards to-wit: On the first Monday of February, in this same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Marianne J. Baldy who sues through her next friend, W. B. Pritchard, by Pope Barrow, Samuel R. Church and Francis H. Stephens, her attorneys, and say that in the record and proceedings aforesaid, there is manifest error in this to-wit:

First:—In deciding, holding, and adjudging that the decisions of this Court in the case of McWhorter *v.* Tarpley *et al.*, 54 Ga., 291; Nelms *v.* Summers, *Ibid.*, 605, and in

other cases, the doctrine of which is recognized in the case of McCook *v.* Harp, 81 Ga., 237, are binding upon this Court, and it is not constrained to follow the decisions of the Supreme Court of the United States in cases involving the same or similar questions.

Second:—In deciding, holding, and adjudging that, according to the above-cited Georgia decisions, a guardian who, during the war between the States, in good faith invested the funds of his ward in bonds of the Confederate States under an order of the judge of the Superior Court properly obtained under then existing laws, was protected thereby and is not liable to the ward for the value of the money so invested.

Third:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in which a judgment was entered for the defendant against this plaintiff.

Fourth:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in refusing to grant a new trial to this plaintiff, overruling the motion of this plaintiff for a new trial.

Fifth:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, overruling the motion for a new trial of this plaintiff and thereby affirming the charge to the jury in these words:

"Following the decision of the Supreme Court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore instructed to find a verdict for the defendant."

Sixth:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in

overruling the motion for a new trial of this plaintiff whereby was affirmed and approved the refusal of said judge of the Superior Court of Chatham County to charge the jury that—

"An investment by a guardian of money of his ward during the Confederate war and while both guardian and ward were residing within the Confederate territory in bonds of the Confederate States was unlawful and the guardian is responsible to the ward for the sum so invested;"

this plaintiff having requested the judge of said Superior Court to instruct the jury in the foregoing language, and said request having been refused and this plaintiff having excepted thereto and assigned error thereon in her motion for a new trial.

Seventh :—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in overruling this plaintiff's motion for a new trial whereby was affirmed and approved the refusal of the judge of the Superior Court to charge the jury that—

"The Constitution of the United States, article 6, paragraph 2, declares that the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

"The code of this State in its very first utterance says that the supreme law in this State is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question whether a State statute is in conflict with the Constitution of the United States. That court has decided that an act of a State Legislature passed during the Confederate war, authorizing a guardian to invest the money of his ward in Confederate bonds is in conflict with the Constitution of the United States and void."

"The Courts of this State are bound by that construction of the Constitution."

"I charge you, therefore, that no act of the legislature of this State, passed during the late war, authorizing a guardian to invest the funds of his ward in Confederate bonds, and no order of any court of this State granted in pursuance of said act of the legislature would authorize such investment."

This plaintiff having requested the judge of said Superior Court to instruct the jury in the foregoing language, and said request having been refused, and this plaintiff having excepted thereto and assigned error thereon in her motion for a new trial.

Wherefore this plaintiff prays that the said judgment of the said Supreme Court of Georgia in favor of the said defendant and against this plaintiff may be reversed.

POPE BARROW,
SAMUEL R. CHURCH,
FRANCIS H. STEPHENS,
Attorneys for the Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

MARIANNE J. BALDY, by her next friend W. B. PRITCHARD,
Plaintiff in error,
v.
JOHN H. HUNTER, as executor of EDWARD H. W. HUNTER, Deceased,
Defendant in error.
} No. 241.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On May 11, 1857, Edward H. W. Hunter, as guardian of Marianne J. Baldy, the plaintiff in error, received from the Administrators of her father's estate, one thousand nine hundred and forty-seven dollars and thirty-eight cents ($1,947.38) on account of her distributive share of his estate. It was received in the shape of promissory notes, on different individuals. Some of them fell due in 1857, some in

1858, and there was also an execution, which was due immediately. Marianne was entitled to one-eighth of her father's estate. The total amount received by her guardian as her share, was two thousand four hundred and eighty dollars and sixty-four cents ($2,480.64).

On January 1, 1859, he had in his hands as guardian for her, two thousand three hundred and forty-seven dollars and eighteen cents, ($2,347.18). (Printed Record, page 6.)

On December, 16, 1861, an Act of the Georgia Legislature, was passed and assented to by the Governor in the following words:

"An Act to authorize Guardians, Trustees, Executors, and Administrators to invest in Confederate States Bonds, and in lands and negroes."

"Section 1. The General Assembly of the State of Georgia, do enact, That Guardians, Trustees, Executors, and Administrators are hereby authorized to invest any funds held by them as such Guardians, Trustees, Executors, and Administrators, in the bonds issued by the Confederate States of America, or in lands and negroes; Provided that an order to that effect be first obtained from the Judge of the Superior Court, who is hereby authorized to consider and pass such applications, either in term time or vacation."

Section 2 repeals conflicting laws.

Assented to December 16, 1861. (Ga. Laws, 1861, page 32.)

On April 25, 1863, Edward H. W. Hunter, as guardian of Marianne J. Baldy, applied to the judge of the Superior Court of Jefferson County, Georgia, for an order authorizing him to invest one thousand dollars ($1,000) of his ward's money in the bonds of the Confederate States, and on that day the judge granted the order, giving leave to the guardian to invest said sum of one thousand dollars ($1,000) in Confederate States bonds. (Printed Record, page 13.)

On the same day, April 25, 1863, at Savannah, the said

Hunter as guardian, invested twelve hundred dollars ($1,200.00) of his ward's money in 8 per cent bonds of the Confederate States, and charged her in his returns with the twelve hundred dollars ($1,200.00). (Printed Record, page 10.)

On March 12, 1866, an Act of the Legislature of Georgia was approved, which is in the following words:

"An Act for the relief of Administrators, Executors, Guardians, and Trustees, and for other purposes."

"Section 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority aforesaid, that all Administrators, Executors, Guardians and Trustees, who in pursuance of any order, judgment or decree of any Court having jurisdiction or of any law of this State did *bona fide* invest the funds of the estate they represent in the bonds, notes, or certificates of the State of Georgia, or of the Confederate States of America, be and they are hereby relieved from all the penalties of mismanagement, misappropriation or misapplication of the funds of the estates they represent, by reason of such investment."

"That all Administrators, Executors, Guardians and Trustees, claiming the benefit of the provisions of this Act, shall before making their final settlement, make oath before the Ordinary of the County in which they have heretofore made their returns, showing what funds of the estates they represent, they have so invested, and shall also swear that the notes, bonds or certificates, so held by them are the same kind of currency which they received for the estates they so represent."

Section 2 repeals conflicting laws.

Approved 12th of March, 1866. (Acts 1865 and 1866, page 85.)

On July 2, 1866, the guardian, Hunter, made oath before the Ordinary of Jefferson County, that he did invest twelve hundred dollars ($1,200.00) of the funds of Marianne J. Baldy, in 8 per cent. bonds of the Confederate States, in the

year 1863, and that the bonds so held by him were the same kind of currency which he received, for her estate. (Printed Record, page 11.)

Marianne J. Baldy was born February 21, 1854.

Her mind became seriously impaired in the summer of 1872.

This disarrangement continued through the years 1873, and 1874, and early in 1875, during the month of February, she became totally insane. (Printed Record, pages, 3 and 4 and 5.)

This insanity continues to the present day, and she is now, and has been for many years an inmate of the Lunatic Asylum at Milledgeville, Georgia. Since 1872, she has not been mentally capable of understanding the nature and import of any business transaction whatever. (Printed Record, page 4.)

She was twenty-one years of age February 21, 1875.

On March 15, 1875, her guardian made what purported to be a settlement with her, she being represented by William H. Baldy, under a power of attorney purporting to have been executed by her February 22, 1875. (Printed Record, page 13.)

This power of attorney was objected to on the trial, and the objection was withdrawn, and the paper allowed to go in evidence upon the statement of the defendant's counsel, that she should not be bound by any settlement made under it. (Printed Record, page 13.)

William H. Baldy stated that when he gave the receipt to the guardian, he was not authorized to make a final settlement for Marianne. (Printed Record, page 14.)

On December 4, 1876, Edward H. W. Hunter, was granted letters of dismissal from his guardianship, by the Ordinary of Jefferson County, Georgia. (Printed Record, page 15.)

The Confederate bonds were never delivered or tendered

to the plaintiff by the guardian, or his executors, nor did she ever ratify, the investment of her money in such bonds.

It was agreed between counsel for the plaintiff and the defendant, in open court during the trial of the case, and approved by the court, that the only question at issue was the lawfulness or unlawfulness of the investment by the guardian of the twelve hundred dollars ($1,200) in Confederate bonds. (Printed Record, pages 27 and 29.)

The court decided that it was a lawful investment and instructed a verdict for the defendant. (Printed Record, page 29.)

The jury found for the defendant, and a decree was entered up accordingly. (Printed Record, page 29.)

The plaintiff thereupon made her motion for a new trial upon the ground that:

First:—The verdict is contrary to law.

Second:—The verdict is contrary to the evidence.

Third:—The court erred in instructing a verdict for the defendant.

Fourth:—The court erred in charging the jury that the investment in Confederate bonds was a lawful investment.

Fifth:—Because the court erred in refusing to give in charge to the jury the request of the plaintiff's counsel as follows:

"An investment by a guardian of money of his ward, during the Confederate war, and while both guardian and ward were residing within the Confederate territory, in bonds of the Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested."

Sixth :—Because the court erred in refusing to charge the jury when requested to do so by the plaintiff's counsel as follows :

"The Constitution of the United States Article 6, paragraph 2, declares that the Constitution of the United States, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

"The code of this State, in its very first utterance, says that the supreme law in this State, is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question, whether a State statute is in conflict with the Constitution of the United States. That Court has decided that an Act of a State Legislature, passed during the Confederate war, authorizing a guardian to invest the money of his ward in Confederate bonds, is in conflict with the Constitution of the United States and void.

The courts of this State, are bound by that construction of the Constitution.

I charge you, therefore, that no Act of the Legislature of this State passed during the late war, authorizing a guardian to invest the funds of his ward, in Confederate bonds, and no order of any court of this State granted in pursuance of said Act of the Legislature would authorize such investment." (Printed Record, pages 30 and 31.)

This motion for a new trial was overruled by the Judge of the Circuit Court, who tried the case, March 14 1895. (Printed Record, page 31.)

Under the law of Georgia, which authorizes a writ of error from a decision upon a motion for a new trial, the case was taken to the Supreme Court of Georgia by the plaintiff. At the March term, 1896, this case was argued and determined in the Supreme Court of Georgia, and the

judgment of the court below was affirmed. (Printed Record, pages 32 and 33.)

The plaintiff then sued out a writ of error from this court, which was allowed by the Hon. Thomas J. Simmons, Chief Justice of the Supreme Court of Georgia. (Printed Record, pages 34 and 36.)

SPECIFICATION OF ERRORS.

We assert and intend to urge that the Supreme Court of the State of Georgia erred :

First :—In holding that it was bound to follow the previous decisions of that Court, namely; McWhorter *v.* Tarpley, 54 Ga., 291, Nelms *v.* Summers, 54 Ga., 605, and that it is not constrained to follow the decisions of the Supreme Court of the United States, in cases involving the same or similar questions, the question involved being whether or not a State statute which authorized the investment by a guardian of his ward's money in the bonds of the Confederate States was repugnant to the Constitution of the United States, the decisions of the Supreme Court of Georgia, being in favor of the validity of said State statute, and the decision of the Supreme Court of the United States being against the validity of the same. (Printed Record, page 32.)

Second :—In deciding that a guardian who invested the funds of his ward in bonds of the Confederate States, during the war between the States, under an order of the judge of the Superior Court, is not liable to the ward for the value of the money so invested. (Printed Record, page 32.)

Third :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court, which

motion was based upon the ground, among others, that the verdict was contrary to law, the verdict being for the defendant under instructions from the Court pursuant to his decision that the guardian's investment in Confederate bonds was a lawful investment. (Printed Record, page 30.)

Fourth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff in said Superior Court, which motion was based upon the ground, among others, that the verdict was contrary to the evidence, the evidence showing that the guardian took credit in his settlement with his ward for twelve hundred dollars ($1,200) of her money invested in Confederate bonds. (Printed Record, pages 30 and 10.)

Fifth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial, made by the plaintiff in said Superior Court, which motion was based upon the ground, among others, that the Court erred in instructing a verdict for the defendant, the Court having instructed such verdict, because he held that the investment by the guardian in Confederate bonds was a lawful investment, by which affirmance said instructions were approved. (Printed Record, page 30.)

Sixth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court, which motion was based upon the ground, among others, that the Court erred in charging the jury as follows:

"Following the decision of the Supreme Court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore, instructed to find a verdict for the defendant."

The judgment of the Supreme Court of Georgia affirmed and approved those instructions. We assert that this was error. (Printed Record, page 30.)

Seventh :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court, which motion was based upon the ground, among others, that the Court erred in refusing to give the following instructions to the jury, which were requested by plaintiff's counsel:

"An investment by a guardian of money of his ward, during the Confederate war, and while both guardian and ward were residing within the Confederate territory, in bonds of the Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested."

The refusal to give these instructions was affirmed by the Supreme Court of Georgia. We assert that the refusal to give the above instruction was manifest error. (Printed Record, page 30.)

Eighth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court which motion was based upon the ground, among others, that the court erred in refusing to give the following instructions to the jury, which were requested by counsel for the plaintiff.

"The Constitution of the United States, Article 6, paragraph 2, declares that the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The code of this State in its very first utterance says that the supreme law in this State is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question whether a State statute is in conflict with the Constitution of the United States. That Court has decided that an act of a State legislature passed during the Confederate war authorizing a guardian to invest the money of his ward in Confederate bonds is in conflict with the Constitution of the United States and void.

The courts of this State are bound by that construction of the Constitution.

I charge you, therefore, that no act of the Legislature of this State passed during the late war, authorizing a guardian to invest the funds of his ward in Confederate bonds, and no order of any court of this State granted in pursuance of said act of the Legislature would authorize such investment."

The refusal to give the above instructions, and the affirmance of that refusal by the Supreme Court of Georgia, was manifest error. (Printed Record, pages 30 and 31.)

BRIEF.

First.

There was but one issue between the plaintiff and the defendant in this case. The sole question is, whether it was lawful or unlawful for a guardian to invest his ward's money in Confederate bonds, (*a*) (Printed Record, page 29.)

Every other question was eliminated from the case.

Pettit *v.* Macon, 95 Ga. 645.

(*a*) The Statute of Limitation of 1869 was not involved.
Hobbs *v.* Cody, 45 Ga. 478.
Windsor *v.* Bell, 61 Ga. 671.

No Statute of Limitation runs against an insane person in Georgia.
Code of 1895, Sec. 3779.

The dismissal of the guardian by the Ordinary is not binding upon her, and is illegal and void in so far as it affirms the Confederate investment.
Code of Georgia, Secs. 2588. 3286. 4843. 4866.
Horn *v.* Lockhart, 17 Wall, 573.

Second.

An investment by a guardian of money of his ward in bonds of the Confederate States of America was unlawful, and he is not entitled to a credit in a settlement with his ward for the sum so invested.

No Act of the Legislature of Georgia authorizing such investment, and no order of any court granted by authority of such act would make it a lawful investment.

Horn *v.* Lockhart, 17 Wall, 570.
Lamar *v.* Micou, 112 U. S., 452, 476.
Chancely *v.* Bailey, 37 Ga. 532.
Wallace *v.* Cannon, 38 Ga. 199.

Third.

The fact that the guardian acted in good faith is irrelevant and immaterial.

Sprott *v.* U. S. 20 Wall., 459, 463.

Fourth.

The guardian is bound to account for the money in gold. He has failed to show that the gold which he collected in 1857, 1858 and 1859, was changed into Confederate money.

King *v.* Hughes, 52 Ga. 600.
Johnson *v.* McCullough, 59 Ga. 212.

POPE BARROW,
SAMUEL R. CHURCH,
FRANCIS H. STEPHENS,
Attorneys for Plaintiff in Error.

MARIANNE J. BAILEY,
Executrix of the last will etc.,
Appellant,
v.
JOHN D. HUNTER,
Executor,
Appellee.

From the Supreme Court of Georgia.

BRIEF FOR APPELLEE.

IN THE

SUPREME COURT OF THE UNITED STATES.

MARIANNE J. BALDY,
By her next Friend, Appellant.
vs.
JOHN H. HUNTER,
Executor,
Appellee.

From the Supreme Court of Georgia.

BRIEF FOR APPELLEE.

STATEMENT OF FACT.

Baldy died in Georgia in 18—, leaving certain minor children, Hunter the intestator became their guardian, and received for his wards certain promisory notes which he collected in Confederate money. This money was the only currency at the time. Holding these funds it became his duty to invest them, and under acts of the Legislature of Georgia; Acts 1861, p. 32 and Acts 1863 and 1864, p. 29, he applied to the Judge of the Superior Court for direction. The judge directed the investment by him in certain lands and Confederate bonds. The lands were saved to the estate, but the bonds were taken from the office of Dr. Hunter when Sherman marched through Georgia. Dr. Hunter was discharged as guardian by the Ordinary of Jefferson county, Ga., but as the plaintiff was a lunatic (in the State Asylum), it is insisted that the discharge did not bind

her, and that the statute of limitations is not good against her. In the meantime Dr. Hunter died, and this suit is against his executor. There is no suggestion of bad faith, want of prudence or wrongful conduct on the part of the late guardian, and the suit is for the recovery of the value of the Confederate money received by the guardian during the war between the States, upon the ground that the investment by him in Confederate money was for the purpose of aiding and abetting the Rebellion, and therefore unauthorized and void. The State Court having original jurisdiction held that under Acts of the Legislature of Georgia he was authorized by the Judge of the Superior Court, who had jurisdiction of the person and subject matter, to make the investment, and that the investment was not in aid of the Rebellion. This judgement was affirmed by the Supreme Court of Georgia, and case is here on appeal from that court.

LAW.

The Guardian had the right to invest Confederate money in his hands under the direction of the Judge of the Superior Court having jurisdiction.

Acts of Georgia, 1861, page 32.
Acts of Georgia, 1863–1864, page 29.
Ordinances of the Conventions of Georgia, 1865–1868.
Campbell vs. Miller, 38th Georgia, 304.
Miller vs. Gould, Id., 465.
Westbrook vs. Davis, 48th Georgia, 473.
Saxon vs. Sheppard, 54th Georgia, 286.
McWhorter vs. Tarpley, Id., 291.
Nelms vs. Summers, Id., 605.
Venable vs. Cody, 68th Georgia, 171.
McCook vs. Harp, 81st Georgia, 236.

These bonds were issued by a *de facto* Government claiming to be *de jure* and maintaining that claim by an organized army. These securities were commodities bought and sold in the open market. Suppose, the

Guardian had under the order of the proper court invested the funds of his ward in land, purchased by him from the Confederate States, and to which they had apparently good title. Suppose afterwards that this land was recovered from the Guardian in ejectment, he having acted in good faith and with prudence; could it be said that he would be liable to his ward? We think not and the reason is, that the transaction would have had no connection with the war between the States, and would not have been entered into with the *intention* and and for the *purpose* of aiding the rebellion and this would be true even if the purchase money had been used by the Confederate States in aid of the rebellion.

The investment in Confederate bonds was under the Statutes of the State and the direction of the Court. The acts of the one and the decision of the other the guardian was bound as a citizen of that State to obey. Unless there were some intent on the part of the guardian by investing in Confederate bonds to aid the rebellion, his act is not wrongful. That act, under the order of the Court, had no connection whatever with the war against the United States.

The Statutes authorizing the investment were not war measures, nor in aid of it. "They were enacted to protect wards and minors in their estates at a time when everything was uncertain and all securities were doubtful. They were to regulate the intercourse between citizens of Georgia and the domestic relation of guardian and ward."

Nelms vs. Summers, 54th Georgia, page 606.

The Federal courts have no jurisdiction over the domestic relations of Guardian and Ward where the parties are all citizens of the same State and are acting under the statutes of that State.

The question is not one on which the Supreme Court of the United States is an appellate tribunal from the decision of a court of last resort of a State. It is simply a question of general public law, whether any particular act or law was in aid of the rebellion.

Texas vs. White, 7. Wallace, 700.

W. Means

BALDY *v.* HUNTER.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 241. Argued April 29, 1898. — Decided May 31, 1898.

Transactions between persons actually residing within the territory dominated by the government of the Confederate States were not invalid for the reason only that they occurred under the sanction of the laws of that government or of any local government recognizing its authority.

Opinion of the Court.

Within such territory, the preservation of order, the maintenance of police regulations, the prosecution of crimes, the protection of property, the enforcement of contracts, the celebration of marriages, the settlement of estates, the transfer and descent of property, and similar or kindred subjects, were, during the war, under the control of the local governments constituting the so called Confederate States.

What occurred or was done in respect of such matters under the authority of the laws of these local *de facto* governments should not be disregarded or held invalid *merely* because those governments were organized in hostility to the Union established by the National Constitution; this, because the existence of war between the United States and the Confederate States did not relieve those who were within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society, nor do away with civil government or the regular administration of the laws, and because transactions in the ordinary course of civil society as organized within the enemy's territory, although they may have indirectly or remotely promoted the ends of the *de facto* or unlawful government organized to effect a dissolution of the Union, were without blame "except when proved to have been entered into *with actual intent* to further invasion or insurrection."

Judicial and legislative acts in the respective States composing the so called Confederate States should be respected by the courts if they were not "hostile *in their purpose* or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution."

Applying these principles to the present case, the court is of opinion that the mere investment by Hunter, as guardian, of the Confederate funds or currency of his ward in bonds of the Confederate States should be deemed a transaction in the ordinary course of civil society, and not, necessarily, one conceived and completed with an actual intent thereby to aid in the destruction of the Government of the Union.

THE case is stated in the opinion.

Mr. Pope Barrow for plaintiff in error. *Mr. S. R. Church* and *Mr. F. H. Stephens* were on his brief.

Mr. P. W. Meldrine for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

William H. Baldy, a citizen of Georgia, died in that State prior to the civil war, leaving several children, one of whom was Marianne J. Baldy who became of full age on the 21st day of February, 1875.

In 1857 Dr. E. H. W. Hunter was appointed her guardian,

and after duly qualifying as such took possession of the estate of his ward.

By an act of the legislature of Georgia, passed on the 16th day of December, 1861, guardians, trustees, executors and administrators were authorized to invest any funds held by them in the bonds issued by the Confederate States, or in lands and negroes — an order to that effect being first obtained from a judge of the Superior Court, who was empowered to consider and pass such applications, either in term time or vacation. Georgia Laws, 1861, p. 32.

On the 25th day of April, 1863, the Superior Court of Jefferson County, Georgia, passed an order granting leave to the guardian of Miss Baldy to invest certain funds then in his hands in Confederate bonds. This order was granted upon the petition of the guardian, who expressed the opinion that such funds should be so invested. On the same day the investment was made.

The legislature of Georgia, by an act approved March 12, 1866, No. 124, entitled "An act for the relief of administrators, executors, guardians and trustees, and for other purposes," declared that all administrators, executors, guardians and trustees, who, in pursuance of an order, judgment or decree of any court having jurisdiction, or of any law of that State, *bona fide* invested the funds of the estate they represented in the bonds, notes or certificates of the State of Georgia or of the Confederate States, "be and they are hereby relieved from all the penalties of mismanagement, misappropriation or misapplication of the funds of the estates they represent, by reason of such investments;" and that all administrators, executors, guardians and trustees, claiming the benefit of the provisions of that act, should, before their final settlement, make oath before the Ordinary of the county in which they had theretofore made their returns, "showing what funds of the estates they represent they have so invested, and shall also swear that the notes, bonds or certificates, so held by them, are the same kind of currency which they received for the estates they so represent." Laws Georgia, 1865–66, p. 85.

On the 2d day of July, 1866, the guardian made a return

to the proper court of his acts for the years 1864 and 1865, showing the amount in his hands, and also made oath before the Ordinary of Jefferson County, Georgia, "that in 1863, in pursuance of an order, judgment or decree of the Superior Court of said county as guardian of M. J. Baldy, a minor, he did *bona fide* invest twelve hundred dollars of the funds of said minor in the eight per cent bonds of the Confederate States, and that the bonds so held by him are the same kind of currency which he received for said minor's estate."

In 1876 Hunter received from the Ordinary of Jefferson County letters of dismissal as guardian of the several children of William H. Baldy. He died nine years thereafter, in 1885, and this suit was brought in 1893 against his executor in the name of Marianne J. Baldy by her next friend, she having become of unsound mind as far back at least as 1875, and being at the time this suit was brought in a lunatic asylum.

At the trial below the plaintiff asked the court to instruct the jury that "an investment by a guardian of money of his ward during the Confederate war, and while both guardian and ward were residing within the Confederate territory, in bonds of the Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested;" and that no act of the legislature of the State "passed during the late war, authorizing the guardian to invest the funds of his ward in Confederate bonds, and no order of any court of the State granted in pursuance of said act of the legislature, would authorize such investment." Both of these instructions were refused.

It is not contended that the case involves any question as to the statute of limitations.

It was agreed at the trial that the only matter in issue was as to the liability of Hunter's estate by reason of his having invested the ward's money in 1863 in bonds of the Confederate States. This appears from the charge to the jury in which the trial court, after observing that its duty was to follow the decisions of the Supreme Court of Georgia, said: "In the present case I am authorized to say that it is agreed between counsel that the investment was made *bona fide*, and

the only question is whether it was lawful or unlawful for the guardian to make this investment; and, further, that as I may decide the legal question, I shall instruct a verdict for plaintiff or defendant, as upon that would depend his right to have credit for that amount in his settlement with his ward. Following the decision of the Supreme Court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore instructed to find a verdict for the defendant." A verdict was accordingly returned for the defendant.

The verdict was made the judgment of the trial court, and that judgment was affirmed by the Supreme Court of Georgia. The latter court, after referring to some of its former decisions, held that "a guardian who, during the war between the States, in good faith invested the funds of his ward in bonds of the Confederate States, under an order of the judge of the Superior Court properly obtained under then existing laws, was protected thereby, and is not liable to the ward for the value of the money invested."

The case is now before this court on writ of error to the Supreme Court of Georgia.

The plaintiff in error contends that the principles to be deduced from our former decisions require the reversal of the judgment. As this proposition is disputed, it is necessary to examine the cases heretofore determined by this court.

Referring to the government established in 1862 in Texas in hostility to the United States, and which at that time was in the exercise of the ordinary functions of administration, this court in *Texas* v. *White*, 7 Wall. 700, 773, said: "It is not necessary to attempt any exact definitions within which the acts of such a state government must be treated as valid, or invalid. It may be said, perhaps with sufficient accuracy, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanat-

ing from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government; and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must, in general, be regarded as invalid and void."

In *Thorington* v. *Smith*, 8 Wall. 1, 7, 10–12, the question arose whether a contract for the payment of Confederate notes, which was made during the civil war between parties residing within the so called Confederate States, could be enforced in the courts of the United States. Upon that question, which was recognized as by no means free from difficulty, the court said: "It cannot be questioned that the Confederate notes were issued in furtherance of an unlawful attempt to overthrow the Government of the United States by insurrectionary force. Nor is it a doubtful principle of law that no contracts made in aid of such an attempt can be enforced through the courts of the country whose government is thus assailed. But, was the contract of the parties to this suit a contract of that character? Can it be fairly described as a contract in aid of the rebellion?" After referring to *United States* v. *Rice*, 4 Wheat. 246, 253, relating to the occupancy of Castine, Maine, in the war of 1812 by the British forces, and *Fleming* v. *Page*, 9 How. 603, 614, relating to the occupancy, during the Mexican war, of Tampico, Mexico, by the troops of the United States — they being described as "cases of temporary possession of territory by lawful and regular governments at war with the country of which the territory so possessed was part," and during which possession, the obligations of the inhabitants to their respective countries were held to have been suspended, although not abrogated — this court said: "The central government established for the insurgent States differed from the temporary governments at Castine and Tampico in the circumstance that its authority did not originate in lawful acts of regular war, but it was not, on that account, less actual or less supreme. And we think it must be classed among the governments of which these are examples. It is to be observed that the rights and obliga-

tions of a belligerent were conceded to it, in its military character, very soon after the war began, from motives of humanity and expediency by the United States. The whole territory controlled by it was thereafter held to be the enemies' territory, and the inhabitants of that territory were held, in most respects, for enemies. To the extent, then, of actual supremacy, however unlawfully gained, in all matters of government within its military lines, the power of the insurgent government cannot be questioned. That supremacy did not justify acts of hostility to the United States. How far it should excuse them must be left to the lawful government upon the reëstablishment of its authority. But it made obedience to its authority, in civil and local matters, not only a necessity, but a duty. Without such obedience civil order was impossible. It was by this government exercising its power throughout an immense territory, that the Confederate notes were issued early in the war, and these notes in a short time became almost exclusively the currency of the insurgent States. As contracts in themselves, except in the contingency of successful revolution, those notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were made payable only 'after the ratification of a treaty of peace between the Confederate States and the United States of America.' While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded therefore as a currency, imposed on the community by irresistible force. It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it had been issued by a foreign government temporarily occupying a part of the territory of the United States. Contracts stipulating for payments in this currency cannot be regarded for that reason only as made in aid of the foreign invasion in the

one case, or of the domestic insurrection in the other. They have no necessary relations to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and though they may indirectly and remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with *actual intent* to further invasion or insurrection. We cannot doubt that such contracts should be enforced in the courts of the United States, after the restoration of peace, to the extent of their just obligation."

In *Delmas* v. *Insurance Co.*, 14 Wall. 661, 665, upon writ of error to the Supreme Court of Louisiana, one of the questions presented was whether a judgment, which was otherwise conceded to be a valid prior lien for the party in whose favor it was rendered, was void because the consideration of the contract on which the judgment was rendered was Confederate money. This court said: "This court has decided, in the case of *Thorington* v. *Smith*, 8 Wall. 1, that a contract was not void because payable in Confederate money; and notwithstanding the apparent division of opinion on this question in the case of *Hanauer* v. *Woodruff*, 10 Wall. 482, we are of opinion that on the general principle announced in *Thorington* v. *Smith*, the notes of the Confederacy actually circulating as money at the time the contract was made may constitute a valid consideration for such contract." So, in *Planters' Bank* v. *Union Bank*, 16 Wall. 483, 499, it was a question whether Confederate treasury notes had and received by the defendants for the use of the plaintiffs were a sufficient consideration for a promise, expressed or implied, to pay anything; and it was held upon the authority of *Thorington* v. *Smith*, above cited, that "a promise to pay in Confederate notes, in consideration of the receipt of such notes and of drafts payable by them, cannot be considered a *nudum pactum* or an illegal contract."

Horn v. *Lockhart*, 17 Wall. 570, 573, 575, 580, was a suit for an accounting as to funds in the hands of an executor, and to enforce the payment to legatees of their respective shares. One of the questions in the case was whether the defendant

was entitled to credit for a certain sum in Confederate notes which, in March, 1864, he had deposited "as executor in the Confederate States Depository Office, at Selma, Alabama, and received a certificate entitling him to Confederate States four per cent bonds to that amount." The receiving of money by the executor in Confederate notes, and the investment of such notes in Confederate bonds, were, it was said, in strict accordance with laws passed by the legislature of Alabama in November, 1861, and November, 1863, when that State was engaged in rebellion against the United States. The Circuit Court held that the executor could not exonerate himself from liability for the balance adjudged to be due the legatees by paying the same in Confederate bonds; that, as a general rule, all transactions, judgments and decrees which took place in conformity with existing laws in the Confederate States between the citizens thereof during the late war, "except such as were directly in aid of the rebellion, ought to stand good;" and that the exception of such transactions was a political necessity required by the dignity of the Government of the United States and by every principle of fidelity to the Constitution and laws of our common country. Upon these grounds it adjudged that the deposit by the executor of money of the estate in a depository of the Confederate States could not be sustained, as it was a direct contribution to the resources of the Confederate government. The decree, therefore, was that the executor should pay to plaintiff the sum so deposited by him in lawful money of the United States. Upon appeal the decree of the Circuit Court was affirmed, three of the members of this court dissenting. This court said: "We admit that the acts of the several States in their individual capacities, and of their different departments of government, executive, judicial and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bonds of society, or do away with civil government, or the regular administration of the laws. Order was

to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in time of peace. No one that we are aware of seriously questions the validity of judicial or legislative acts in the insurrectionary States touching these and kindred subjects, where they were not hostile *in their purpose* or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution. The validity of the action of the probate court of Alabama in the present case in the settlement of the accounts of the executor we do not question, except so far as it approves the investment of funds received by him in Confederate bonds, and directs payment to the legatees of their distributive shares in those bonds. Its action in this respect was an absolute nullity, and can afford no protection to the executor in the courts of the United States."

In the *Confederate Note case*, 19 Wall. 548, 555–557, in which it was held that parol evidence was admissible to prove that the word "dollars" in a contract made during the civil war meant, in fact, Confederate notes, the court said: "The treasury notes of the Confederate government were issued early in the war, and, though never made a legal tender, they soon, to a large extent, took the place of coin in the insurgent States. Within a short period they became the principal currency in which business in its multiplied forms was there transacted. The simplest purchase of food in the market, as well as the largest dealings of merchants, were generally made in this currency. Contracts thus made, not designed to aid the insurrectionary government, could not, therefore, without manifest injustice to the parties, be treated as invalid between them. Hence, in *Thorington* v. *Smith* this court enforced a contract payable in these notes, treating them as a currency imposed upon the community by a government of irresistible force. As said in a later case, referring to this decision, 'It would have been a cruel and oppressive judgment, if all the transactions of the many millions of people composing the inhabitants of the insurrectionary States, for the several years

of the war, had been held tainted with illegality because of the use of this forced currency, when those transactions were not made with reference to the insurrectionary government.' *Hanauer* v. *Woodruff*, 15 Wall. 448." Again: "When the war closed, these notes, of course, became at once valueless and ceased to be current, but contracts made upon their purchasable quality, and in which they were designated as dollars, existed in great numbers. It was at once evident that great injustice would in many cases be done to parties if the terms used were interpreted only by reference to the coinage of the United States or their legal tender notes, instead of the standard adopted by the parties. The legal standard and the conventional standard differed, and justice to the parties could only be done by allowing evidence of the sense in which they used the terms, and enforcing the contracts thus interpreted."

Sprott v. *United States*, 20 Wall. 459, 460, 462, was a suit against the Government in the Court of Claims under the Captured and Abandoned Property Act of March 12, 1863, c. 120, 12 Stat. 820, one of the provisions of which was that a claimant, before being entitled to recover the proceeds of the property, must prove that he had never given aid or comfort to the rebellion. It appeared that the cotton in question was sold to the claimant by an agent of the Confederate States as "cotton belonging to the Confederate States, and it was understood by the claimant at the time of the purchase to be the property of the rebel government, and was purchased as such." After observing that the cotton had been in the possession and under the control of the Confederate government, with claim of title, and that it was taken by the Union forces during the last days of the existence of that government, sold, and the proceeds deposited in the Treasury, this court said: "The claimant now asserts a right to this money on the ground that he was the owner of the cotton when it was so captured. This claim of right or ownership he must prove in the Court of Claims. He attempts to do so by showing that he purchased it of the Confederate government and paid them for it in money. In doing this he gave aid and assistance to the rebellion in the most efficient manner he possibly could.

He could not have aided that cause more acceptably if he had entered its service and become a blockade runner, or under the guise of a privateer had preyed upon the unoffending commerce of his country. It is asking too much of a court of law sitting under the authority of the Government then struggling for existence against a treason respectable only for the number and the force by which it was supported, to hold that one of its own citizens, owing and acknowledging to it allegiance, can by the proof of such a transaction establish a title to the property so obtained. The proposition that there is in many cases a public policy which forbids courts of justice to allow any validity to contracts because of their tendency to affect injuriously the highest public interests, and to undermine or destroy the safeguards of the social fabric, is too well settled to admit of dispute. That any person owing allegiance to an organized government, can make a contract by which, for the sake of gain, he contributes most substantially and knowingly to the vital necessities of a treasonable conspiracy against its existence, and then in a court of that Government base successfully his rights on such a transaction, is opposed to all that we have learned of the invalidity of immoral contracts. A clearer case of turpitude in the consideration of a contract can hardly be imagined unless treason be taken out of the catalogue of crimes." The court further said: "The recognition of the existence and the validity of the acts of the so called Confederate government, and that of the States which yielded a temporary support to that government, stand on very different grounds, and are governed by very different considerations. The latter, in most, if not in all, instances, merely transferred the existing state organizations to the support of a new and different national head. The same constitutions, the same laws for the protection of property and personal rights remained, and were administered by the same officers. These laws, necessary in their recognition and administration to the existence of organized society, were the same, with slight exceptions, whether the authorities of the State acknowledged allegiance to the true or the false Federal power. They were the fundamental principles for which civil society is organized

into government in all countries, and must be respected in their administration under whatever temporary dominant authority they may be exercised. It is only when in the use of these powers substantial aid and comfort was given or intended to be given to the rebellion, when the functions necessarily reposed in the State for the maintenance of civil society were perverted into the manifest and intentional aid of treason against the Government of the Union, that their acts are void."

From these cases it may be deduced —

That the transactions between persons actually residing within the territory dominated by the government of the Confederate States were not invalid for the reason only that they occurred under the sanction of the laws of that government or of any local government recognizing its authority;

That, within such territory, the preservation of order, the maintenance of police regulations, the prosecution of crimes, the protection of property, the enforcement of contracts, the celebration of marriages, the settlement of estates, the transfer and descent of property, and similar or kindred subjects, were, during the war, under the control of the local governments constituting the so called Confederate States;

That what occurred or was done in respect of such matters under the authority of the laws of these local *de facto* governments should not be disregarded or held to be invalid *merely* because those governments were organized in hostility to the Union established by the national Constitution; this, because the existence of war between the United States and the Confederate States did not relieve those who were within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society, nor do away with civil government or the regular administration of the laws, and because transactions in the ordinary course of civil society as organized within the enemy's territory, although they may have indirectly or remotely promoted the ends of the *de facto* or unlawful government organized to effect a dissolution of the Union, were without blame "except when proved to have been entered into *with actual intent* to further invasion or insurrection;" and,

That judicial and legislative acts in the respective States composing the so called Confederate States should be respected by the courts if they were not "hostile *in their purpose* or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution."

Applying these principles to the case before us, we are of opinion that the mere investment by Hunter, as guardian, of the Confederate funds or currency of his ward in bonds of the Confederate States should be deemed a transaction in the ordinary course of civil society, and not, necessarily, one conceived and completed with an actual intent thereby to aid in the destruction of the Government of the Union. If contracts between parties resident within the lines of the insurrectionary States, stipulating for payment in Confederate notes issued in furtherance of the scheme to overturn the authority of the United States within the territory dominated by the Confederate States, were not to be regarded, for that reason only, as invalid, it is difficult to perceive why a different principle should be applied to the investment by a guardian of his ward's Confederate notes or currency in Confederate bonds — both guardian and ward residing at that time, as they did from the commencement of the civil war, within the Confederate lines and under subjection to the Confederate States.

As to the question of the intent with which this investment was made, all doubt is removed by the agreement of the parties at the trial that the investment was *bona fide*, and that the only question made was as to its legality. We interpret this agreement as meaning that the guardian had in view only the best financial interests of the ward in the situation in which both were placed, and that he was not moved to make the investment with the purpose in that way to obstruct the United States in its efforts to suppress armed rebellion. We are unwilling to hold that the mere investment in Confederate States bonds — no actual intent to impair the rights of the United States appearing — was illegal as between the guardian and ward.

It is said, however, that any such conclusion is inconsistent with the decision in *Lamar* v. *Micou*, 112 U. S. 452, 476. That was a suit in the Circuit Court of the United States for the Southern District of New York, having been removed thereto from the Supreme Court of that State. One of the questions arising in that case was as to the liability of a guardian for moneys belonging to his wards which were invested by him during the civil war in bonds of the Confederate States. This court said: "Other moneys of the wards in Lamar's hands, arising either from dividends which he had received on their behalf or from interest with which he charged himself upon sums not invested, were used in the purchase of bonds of the Confederate States, and of the State of Alabama. The investment in bonds of the Confederate States was clearly unlawful, and no legislative act or judicial decree or decision of any State could justify it. The so called Confederate government was in no sense a lawful government, but was a mere government of force, having its origin and foundation in rebellion against the United States. The notes and bonds issued in its name and for its support had no legal value as money or property, except by agreement or acceptance of parties capable of contracting with each other, and can never be regarded by a court sitting under the authority of the United States as securities in which trust funds might be lawfully invested. *Thorington* v. *Smith*, 8 Wall. 1; *Head* v. *Starke*, Chase, 312; *Horn* v. *Lockhart*, 17 Wall. 570; *Confederate Note case*, 19 Wall. 548; *Sprott* v. *United States*, 20 Wall. 459; *Fretz* v. *Stover*, 22 Wall. 198; *Alexander* v. *Bryan*, 110 U. S. 414. An infant has no capacity by contract with his guardian, or by assent to his unlawful acts to affect his own rights. The case is governed in this particular by the decision in *Horn* v. *Lockhart*, in which it was held that an executor was not discharged from his liability to legatees by having invested funds, pursuant to a statute of the State, and with the approval of the probate court by which he had been appointed, in bonds of the Confederate States, which became worthless in his hands."

It was, of course, intended that this language of the court

be taken in connection with the history of the guardian's transactions as disclosed in the full and careful statement of the case that preceded the opinion. It appears from that statement that the guardian was appointed prior to the war by the Surrogate of Richmond County, New York, in which State he, at that time, 1855, resided; that immediately upon his appointment he received, in New York, several thousand dollars belonging to each of his wards, and invested part of it in 1856 in the stock of a New York bank and a part in 1857 in the stock of a Georgia bank, each bank then paying good annual dividends; that in 1861 he had a temporary residence in New York; that upon the breaking out of the rebellion he removed all his property and voluntarily left New York, passing through the lines to Savannah where he took up his residence, sympathizing with the rebellion and doing all that was in his power to accomplish its success, until January, 1865; and that he took up his residence again in New York in 1872 or 1873, after which time he lived in that city. It further appeared that of the money of his wards accruing from bank stocks he, in 1862, invested $7000 in bonds of the Confederate States and of the State of Alabama, and afterwards sold the Alabama bonds and invested the proceeds in Confederate States bonds. It thus appears that *Lamar* v. *Micou* was a case in which the guardian, becoming such under the laws of New York, in violation of his duty to the country, and after the war became flagrant, voluntarily went into the Confederate lines, and there gave aid and comfort to the rebellion; and yet he asked that the investment of his wards' money in Confederate States bonds receive the sanction of the courts sitting in the State under the authority of whose laws he became and acted as guardian.

Besides, it is distinctly stated in the opinion in that case that the sums which Lamar used in the purchase of bonds of the Confederate States were moneys of the wards in his hands "arising either from dividends which he had received in their behalf, or from interest with which he charged himself upon sums not invested," 112 U. S. 476, which is a very different thing from reinvesting (as in the present case) in